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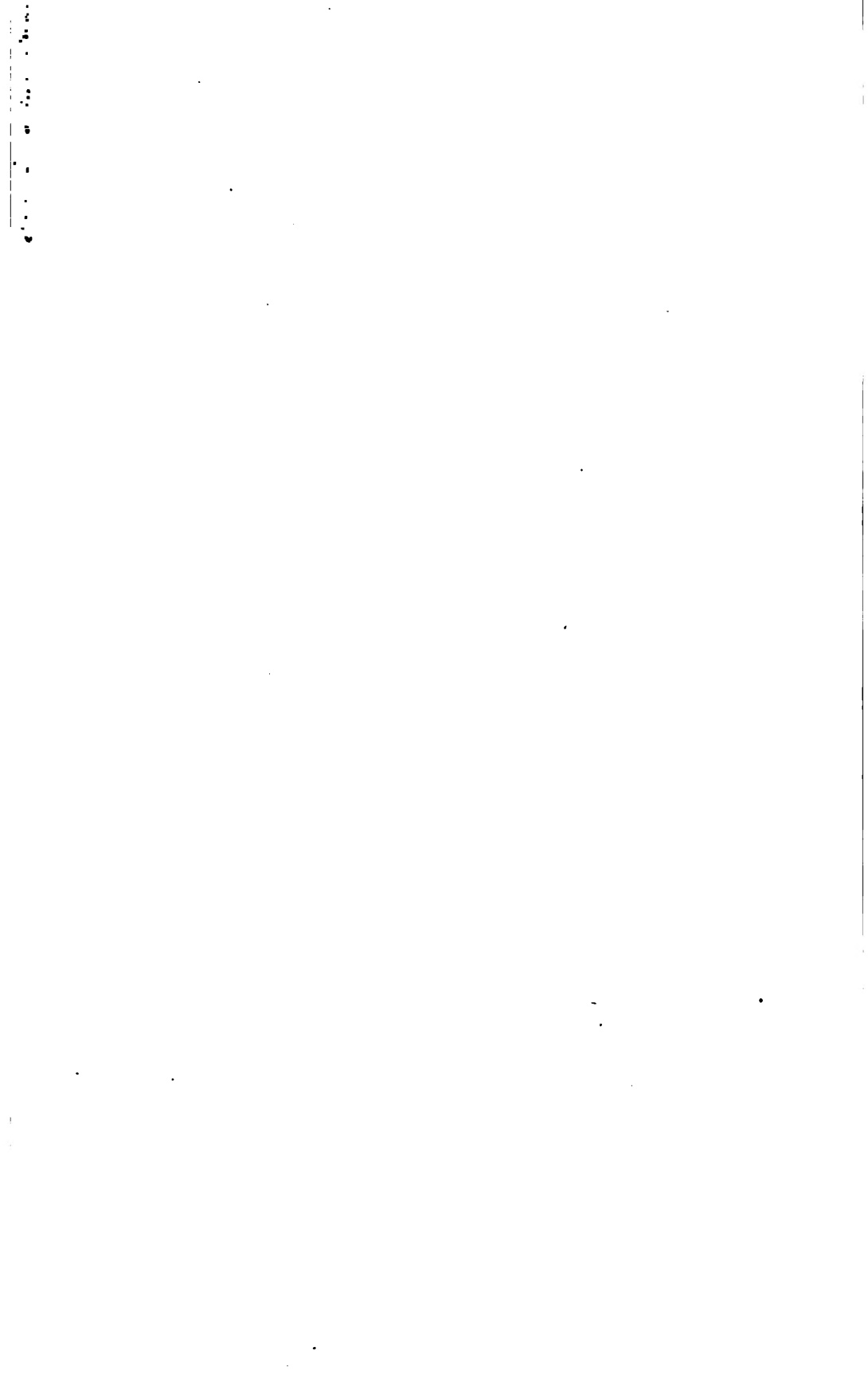
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Pertinet, et nescire malum est, agitamus."
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— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE PRACTICE ON ELECTION PETITIONS.

As a much greater number of petitions will be presented to Parliament in the ensuing Session for setting aside the election of members than on any previous occasion, we think it may be useful to give an outline of the manner of proceeding on them.

Previously to the tenth year of George the Third, petitions could only be presented against undue elections by electors or candidates, and such petitions were decided by the House at large; but by the 10 G. 3, c. 16, commonly called the Granville Act, a new mode of disposing of them was introduced. This statute, and many subsequent acts, were repealed, but re-enacted and consolidated by the 10 G. 4, c. 22, which is now the act by which election petitions are regulated.

By this act, whenever a petition, complaining of an undue election of a member, shall be presented to the House of Commons, within such time as shall be from time to time limited by the House, a day and hour shall be appointed by the House for taking the same into consideration, and notice thereof given accordingly; and this time, within which election petitions are to be presented and so to be limited, is always fourteen days, from an order passed by the House at the beginning of every session. This time is strictly observed, and no petitions of this nature, presented after such time, will be received.

On the time appointed by the House for taking the petition into consideration, if the petitioners do not attend, the order will be discharged; and recognizances are to be entered into by the petitioners fourteen days after the petition is presented in the sum of 1000*l.*, with two sufficient sureties

in the sum of 500*l.*, for securing the payment of costs; and full inquiry is to be made into their sufficiency, and proper time allowed for it. The member may, if he please, decline to defend his return; and the voters may, on petition, become a party to oppose or defend the return.

An important limit is put to the expense of a petition, by the 14th section of the act, re-enacting the 1st section of the 57 G. 3, c. 71, which provides that lists of votes intended to be objected to, with the heads of objections to each, shall be delivered to the Clerk of the House of Commons, and shall be open to inspection, and evidence is to be confined to the objections particularised in the lists.

When the day arrives on which the petition is to be taken into consideration, the House will proceed to the order of the day for that purpose before any other business. The Serjeant at Arms is to go with the mace to the places adjacent and require the attendance of the members; the House is then to be counted; and if there are not 100 members present, the House shall adjourn until the following day, and so from day to day until there shall be a sufficient attendance of members. If 100 members shall be found to be present, the parties, their counsel, or agents, shall be ordered to attend at the bar, and then the door of the House shall be locked, and no member shall be suffered to enter into or depart from the House until the parties, their counsel, or agents, shall be directed to withdraw; when the door shall be locked, the names of all the members of the House, written on distinct pieces of paper, being all as near as may be of the same size and folded up in the same manner, shall be put into six glasses to be placed on the table for that purpose, and then the Clerk shall publicly draw out of the six

glasses the pieces of paper and deliver the same to the Speaker, to be by him read to the House, and so shall continue to do until thirty-three names of the members present be drawn. But if the name of any member who shall have given his vote at the election, or who shall be a petitioner, or against whose return a petition shall be then depending shall be drawn, his name shall be set aside, and not entered in the list of names drawn. Members above sixty years, or who have previously served on a select committee, shall be excused, if they require it; and any member is at liberty to offer any other excuse, and the opinion of the House shall be taken thereon. If any member be excused, another shall be drawn, so that the number of thirty-three members shall be completed; and then, and not till then, the House shall proceed to other business.

As soon as the thirty-three members shall be so chosen, the petitioners and sitting member, their counsel, or agents, shall withdraw, together with the clerk appointed to attend the select committee, and the petitioner and the sitting member shall alternately strike off one of the thirty-three members until the number shall be reduced to eleven, and the clerk within one half hour afterwards shall deliver into the House the names of the eleven members, who shall be sworn at the table to try the matter of the petition. The committee so chosen shall meet within twenty-four hours after the appointment, unless a Sunday, Christmas-day, or Good Friday shall intervene.

The committee on their meeting shall elect a chairman: they are to be attended by a short-hand writer, and are empowered to send for and examine persons, papers, and records, and to examine witnesses upon oath; and such witnesses, if misbehaving, may be reported to the House, and committed to the custody of the Serjeant at Arms. The majority of the committee is to determine the merits of the petition, and to report their decision to the House; and to report whether the petition or the opposition to it is frivolous and vexatious, or whether the return is vexatious or corrupt.

The duty of attendance on these committees is enforced with great strictness. They are not to adjourn for more than twenty-four hours without leave of the house, unless a Sunday, Christmas-day, or Good Friday intervene; a committee-man is not to absent himself without leave obtained from the House, or on special cause

shewn and verified on oath; the committee is not to sit until all are met, and on failure of meeting within one hour, adjournment is to be made. The chairman is to report absentees, who are to be censured by the House, unless they shew on oath good cause of absence. If more than two members be absent the committee shall adjourn, and if any committee is reduced to less than nine, by non-attendance of its members, it shall be dissolved; and these committees are not dissolved by any prorogation of Parliament, but shall be adjourned to twelve o'clock on the day immediately following.

The important question of costs is also provided for to a certain extent by this act. If a petition is reported frivolous or vexatious, the party who shall have opposed it shall be entitled to recover from the persons who signed the petition full costs: if the opposition be reported frivolous or vexatious, the persons who signed the petition shall recover from the persons opposing the petition full costs. These costs are to be taxed within three months after the trial of the petition, by a clerk of the House, and one of the masters in Chancery, clerks in the Court of King's Bench, prothonotaries in the Common Pleas, or clerks in the Exchequer. The costs are to be taxed as between attorney and client, and are to be recovered by action of debt in any Court of Record.

It is to be observed, that in most petitions the great practical question is the one of costs. As they are frequently very heavy, it is of great importance to consider, not only whether a petition or an opposition will be successful, but whether it will be pronounced frivolous and vexatious. It is almost impossible to lay down general rules on this subject, as the particular circumstances alone will be taken into consideration by the committee. But it may be observed, that the opposition by a sitting member will very rarely be reported frivolous and vexatious.^a

Irish petitions, in some respects, differ from English. Lists of the names of all voters to which either party objects must in like manner be interchanged, and the grounds of objection must be specified and particularised.^b But in Irish petitions a commission to Ireland to examine witnesses may be moved for, if notice of the intention is given on the petition being pre-

^a Rogers *Prac. on Elec.* 222, ed. 1837.

^b 47 G. 3, c. 14.

sented.^c This commission is to be moved for in the committee; but it is entirely discretionary with them whether they grant or refuse the application for the commission. If the committee consider it necessary they shall appoint the commission in the following manner.^d In the presence of the committee and of all parties interested, the names of three barristers in Ireland, of six years standing, who have consented under their hands and seals to become commissioners, shall be delivered to the chairman of the committee by each of the parties, and a list of the names being made, the several parties, beginning with the petitioners, shall, in the presence of the committee, proceed alternately to strike off a name until the number is reduced to two. When these two are chosen, a third, who is to be the chairman, shall be appointed by the several persons interested if they can agree; but if not, then the committee itself may nominate any barrister of the same standing.

In other respects the practice on Irish petitions in no way differs from petitions against a return from any other part of the United Kingdom.

It is proper to mention that the subject of controverted elections has recently been referred to a select committee of the House of Commons, who have made a report^e on the subject, (and a bill was brought in last session founded on it,) in which a different course is recommended. It is here proposed that each election committee shall consist of five members only, and that all members capable of serving shall serve in their turn; that the Speaker shall, at the commencement of every session, nominate three barristers of not less than seven years standing, and with a salary of 2000*l.* a-year each, to fill the office of assessors to such committees, such nomination being subject to the confirmation of the House; that one of these shall assist at the deliberations of every election committee, presiding as chairman, but without power to vote, and that in all cases in which there shall be a difference of opinion in the committee, the assessor shall remain with the committee while strangers are excluded; that he shall, before any division, state the question at issue to the committee, together with his opinion thereon; that he pronounce the decisions of the committee, declaring his

own assent or dissent, and that such assent or dissent shall be recorded in the minutes of the committee.

The bill intending to effect this change will probably be introduced in the approaching session; but we much doubt of the success of the plan.

THE CLOSE OF THE VACATION.

Michaelmas Term began on Thursday, and during the whole of this week there has been a constant influx of lawyers into town. The long-silent courts and squares of the Inns of Court again resound with hasty and business-like steps; the air is filled with legal sounds and enquiries. We catch, as we pass, some such words as these at every turn:—"Will you undertake to stay proceedings?" "We have fixed the consultation for nine on Monday." "Costs to be taxed on Thursday next." "I shall certainly move to dismiss the bill next seal, if some step be not taken." "We must get a rule *nisi*, at any rate." Or we are sure to hear some such talk as the following:—"How are you? When did you come up?" "Are you going to dine in Hall to-day?" "Who are you with?" Or "I understand the examination will be very strict this term." Meanwhile clerks hurry by with briefs under their arms; their masters walk about with more deliberate pace, and with more bulky papers, or large blue bags. The barrister is seen, at an early hour, wending his way to his chambers, from north or west, and every thing shews that "the Vacation has closed."

HOW FAR WRITTEN CONTRACTS MAY BE ALTERED BY PAROL.

THE questions to which the Statute of Frauds has given rise, may well be deemed interminable, when we find that after a lapse of more than a century and a half, such a primary question as the above is still under discussion. We draw the attention of our readers to it, because the Statute of Frauds is of daily application, and no one is entitled to feel full confidence in himself with reference to a very large class of transactions, who is not extensively acquainted with the cases which have been decided upon its enactment.

^c 45 G. 3, c. 106, s. 5.

^d 42 G. 3, c. 106, s. 4.

^e Ordered to be printed July 27, 1836.

It has recently been alleged that there is some discrepancy amongst the decisions upon the above question; and that in certain cases in which the Statute requires writing, the Courts have given effect to verbal alterations of written agreements: hence arises the importance of reviewing the past, and ascertaining the general rule of law as means of avoiding future infringements on established principles. We are, however, always anxious to vindicate former decisions, because we regard their integrity as of great public importance, and on this account we purpose to examine the cases which have been impugned, before we enter upon those which afford a partial answer to our question.

"In *Cuff v. Penn.*^a" said a very learned Judge recently, "and some other cases relating to contracts for the sale of goods of the value of 10*l.*, which the Statute of Frauds requires to be in writing, it has been held, that the *time* in which, (by the agreement in writing,) the goods were to be delivered, might be extended by a verbal agreement, *but I never could understand the principle on which those cases proceed*; for a new contract to deliver within the extended time must then be proved, partly by written and partly by oral evidence."

Now we venture to think that the case alluded to,^b if closely examined, will not be found to fall under this animadversion. It was an action by the vendor against the vendee for not accepting the residue of a certain quantity of bacon which the latter had purchased under a written agreement, and some of which had been delivered to him. It appeared that the contract was for the delivery of it on the 20th of April, and that the part which had been accepted, had not been delivered till the 21st of April; that after the 20th, the defendant verbally requested the plaintiff not to press the rest upon him,—meaning that he should be discharged from taking it at all,—and to this the plaintiff assented, not, however, in this sense, but in the sense of not pressing it upon him *at present*; which the Court thought the true meaning; and the Court held, that this verbal understanding did not prevent the plaintiff from recovering.

There were two counts in the declaration; the first framed on the original agreement, the second stated what subsequently passed as a new agreement. Now if the judgment of Lord *Ellenborough* is examined, it

will appear that the Court thought the plaintiff entitled to recover under the original agreement; and consequently ascribed no effect to the parol agreement to postpone the delivery, as stated in the second count. "In the present case," said Lord *Ellenborough*, "there exist two *indicia*, pointed out by the statute; *viz.*, a contract for sale in writing, and a part-performance; so that not only the literal intention of the statute, but the spirit also, is satisfied. The objection then, does not found itself upon a non-compliance with the provisions of that statute, but is more properly this, that an agreement once made in writing, cannot be varied by parol. *If this agreement had been varied by parol, I should have thought, on the authority of Meares v. Ansell, that there would have been strong ground for the objection.* But here what has been done, is only in performance of the original contract." What is this but saying that the Court considered that the rights of the vendor stood upon the original agreement, and that the defendant was not entitled to object to the postponement of the plaintiff's offer to deliver the bacon, to a later period than was mentioned in the agreement, because the postponement was at his own request, and for aught that appeared, perhaps the plaintiff was ready to make that delivery at any time. The case may be stated in this form;—

"I have bought," says the purchaser, "bacon of you; the market has fallen: you have delivered me more than I want; do not press the rest upon me at present:" to which the seller in substance replies "I will not:" in the end, the purchaser says "now I will not have the rest at all, and you cannot compel me, because we have altered the time for delivering it, and the new stipulation is not in writing." To which the seller replies, "I stand on the original agreement; I have postponed the delivery only for your accommodation; you cannot found a right to break the contract upon my forbearance to insist upon its strict and literal execution."

In the course of his judgment, in *Goss v. Lord Nugent*,^c Lord *Denman* also refers to this case, and to that of *Thresh v. Rake*,^d as inconsistent with the general tenor of the decisions. The latter case was decided by Lord *Kenyon*, and we have great satisfaction in believing that a careful examination of the facts will be sufficient for its

^a Mr. Justice Parke in *Goss v. Lord Nugent*, 5 B. & Ad. 64.

^b 1 M. & S. 21.

^c 5 B. & Ad. 58.

^d 1 Esp. 52.

vindication. It was an action for a penalty under an agreement, for not assigning to the plaintiff certain premises with the fixtures, which were agreed to be taken at a valuation: it was agreed that the valuation should be made on the 13th of August; through the default of the defendant's appraiser, it was not made till the 14th, and this postponement was acquiesced in by the appraisers of both parties. Lord *Kenyon* held the postponement of the appraisement immaterial; nor can we see how this is any infringement on the Statute of Frauds; for, it might reasonably be contended, that in the stipulation for the making of an appraisement, the day was not essential: suppose for example, the time had been impossible, or illegal, Sunday, for instance; an appraisement within any reasonable time would have been a performance of the stipulation. Lord *Kenyon* seems to have taken that view of the question; but, secondly, the default to appraise on the 13th, was the default of the defendant, who therefore, was not entitled to object to the postponement.

The case of *Warren v. Stagg*,* also referred to by Lord *Denman*, admits of the same explanation: it was an action by the vendee against the vendor of some barley, for not delivering the barley on or before a certain day, according to the agreement. It appeared that the plaintiff, the vendee, had subsequently consented that the delivery should be postponed to a later period. The plaintiff had declared on the original agreement; it was objected that this was a variance, because there had been a new agreement, but Mr. Justice *Buller* overruled the objection. The Statute of Frauds does not appear to have been mentioned, and what is here called a new agreement, was nothing more than a consent on the part of the plaintiff to take the barley at a later period than he could have been compelled to take it: it was a mere waiver of a right to rescind the contract: in effect, it was saying, "If you cannot deliver it now, I will take it at a later period;"—whether the party saying this, could be charged upon such an agreement is another question.

With this explanation of the only cases mentioned, either by Mr. Justice *Parke* or by Lord *Denman*, we believe we establish perfect harmony among the decisions upon one part at least of the question, and will proceed to state two recent very important decisions.

The first is the case of *Goss v. Lord Nugent*,† the decision of which proceeds upon the rule that all essential terms are required by the Statute of Frauds to be in writing. It was an action by the vendor against the vendee, for the price, *minus* the deposit, of certain lots of land, for the purchase of which there was a sufficient written agreement: but to one of the lots the vendor could make no title, and the vendee was satisfied to take it without a title; he agreed, however, only *verbally* to waive his right to a title. The vendor, according to the original agreement, was to be paid upon making a title: it was one entire price for all the lots. He would therefore have had to aver that he had offered a good title to all the lots, if he had not been excused as to one, and he had to state the agreement under which he derived his excuse in his declaration: his right, therefore, to recover the same price for twelve lots as was agreed to be given for thirteen, essentially rested on a parol agreement: the Court held this was against the Statute of Frauds, and gave judgment for the defendant.

In the other case to which we have alluded,‡ the declaration stated, that the plaintiffs had agreed to grant, and the defendant to take, a lease of certain premises, and with them the straw, fodder, and chaff, left by the outgoing tenant, at a valuation to be made by two persons, who were to be appointed respectively by the plaintiff and defendant; and that afterwards they agreed that the valuation should be made on behalf of both of them by *A. B.*, that is to say, by a certain specified person. The plaintiffs averred their readiness to grant the lease; that the defendant had taken possession of the premises, straw, &c.; that the latter had been valued by *A. B.*; and alleged as a breach of the contract that the defendant had not paid the price ascertained by the valuer. The defence was, that the agreement to abide by the valuation of *A. B.*, in lieu of having a valuation made by two persons, was verbal, whereas the original agreement was in writing. Upon demurrer the defendant had judgment. In this case, it is to be observed, the new agreement only was declared upon.

"The real question," said Lord *Denman*, in delivering judgment, "is, whether the waiver of the mode of valuation is binding, not being in writing, and necessarily so, for it related to an interest in lands; and,

* Cited in *Littler v. Holland*, 3 T. R. 591.

† 5 B. & Ad. 58.

‡ *Harvey v. Graham*. 5 Ad. & E. 61.

being an entire agreement, the whole was necessarily in writing. *Chater v. Beckett*. Now, assuming that it was competent to the parties to waive and abandon the whole of the first agreement by a subsequent agreement not in writing, (which is, however, doubted in *Goss v. Lord Nugent*,) yet here, as in that case, the parties have not waived and abandoned the whole; for it appears by the declaration that the lease is not yet granted; that the original agreement to grant it is still subsisting; and the plaintiff avers his readiness to grant it under that agreement. What has been done is a waiver and abandonment of part only; and, if that part had of itself required writing within the Statute of Frauds, the cases of *Goss v. Lord Nugent*, and *Earl of Falmouth v. Thomas*, are express authorities to shew that the waiver would not be binding. Here that part might have been good of itself without writing, by reason of the acceptance, which is averred in the first count, though it may be otherwise as to the second count, which is for goods bargained and sold, not sold and delivered; and it is contended that, as it was competent to the parties to have made two contracts, in the first instance,—one in writing as to the lease, the other not in writing as to the straw, manure, &c.;—so it was competent to them afterwards, by agreement not in writing, to separate into two parts the subject-matters of the original agreement, and to substitute a new agreement not in writing, as to the straw, manure, &c. We think that is not so; but that the agreement being entire in the first instance, must so continue; and that it cannot be separated or altered otherwise than by writing. If it could, it would follow that, should the present plaintiff hereafter refuse to execute the lease, the present defendants, in suing for such refusal, would be obliged to state the altered agreement as the consideration, and aver a readiness to perform it, and would have to prove their case partly by writing, and partly by oral evidence; the very predicament which the Statute of Frauds was intended to prevent."

We here anticipate that some of our readers will ask, what is the ultimate consequence of this decision? Is the plaintiff to lose the price of the straw &c., of which the defendant has obtained the possession? Is he to lose the right of compelling the defendant to take a lease according to the principal stipulation? By no means: the verbal agreement having no operation, it follows that the plaintiff's rights are unimpaired by

it, and that the original agreement has the same force as if there had been no verbal agreement. The plaintiff should name his valuer, and if the defendant refuses to name his, he may then be liable for the value of the straw &c., as goods sold and delivered, or the plaintiff may declare upon the original agreement.

In answer, therefore, to the question proposed at the head of this article, we say, that an agreement which is required by the Statute of Frauds to be in writing, cannot be *altered* or *partially waived* by parol.

The question still remains, whether a parol agreement will *discharge* a person from a written agreement, in a case in which the latter is within the Statute of Frauds.

This question (though not proposed in the same terms,) is discussed by Sir Edward Sugden:^b—"Nihil," says the learned author, "*nihil tam convenciens est naturali equitati unumquodque dissolvi eo ligamine quo ligatum est*:" and therefore in general, as we have seen, an agreement in writing cannot be controlled by averment of the parties, as it would be dangerous to admit such nude averments against matter in writing. This was an imperative rule, previously to the Statute of Frauds; and the statute required that "all agreements upon any contract or sale of lands &c., should be in writing." Now as Lord Hardwicke observed, an agreement to waive a purchase contract, is as much an agreement concerning lands as the original contract: *notwithstanding which, it is universally considered, that an agreement in writing concerning lands, may be discharged*, although it cannot be varied by parol: and in a late case where all the authorities were mentioned, but in which it was not necessary to decide the point, the Master of the Rolls appeared to consider that a written agreement might be abandoned by parol." Yet, notwithstanding the universality of this opinion, Sir Edward Sugden evidently prefers Lord Hardwicke's dictum, and after reviewing the authorities, he ends by saying, "whether an absolute parol discharge of a written agreement, not followed by any other agreement upon which the parties have acted, can be set up even as a defence in Equity, seems questionable."

Now we beg to say, that to us there seems no doubt that at Common Law a written agreement might be waived by a parol agreement; for this reason, that the

^b 1 Vendors and Purchasers, 146.

writing did not, like a deed, operate *proprio vigore*, but merely in virtue of the consideration: it is from this that it derives its legal force, and an agreement in words without writing, made upon a sufficient consideration, was just as effectual. And for this reason also, we may add, the dissolution of a written contract by a verbal, is not repugnant to the maxim *unumquodque dissolvi eo legamine quo ligatur*; for the binding power is in the consideration.

The question then turns entirely upon the statute, and we must say, that although we have the concurrent judgment of two such great lawyers as Lord Hardwicke and Sir Edward Sugden, we think the opinion which it is admitted prevails universally, must still prevail, until some case arises of sufficient importance to be carried before the highest tribunal.

In conclusion, we will give the words of the 4th section, though the question also arises under the other sections: they are as follows;—

That “no action shall be brought whereby to charge any person upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.”

CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT, 1837.

No. XXVIII.

DUTIES OF CLERKS OF PEACE.

1 Vict. c. 83.

This is “An Act to compel Clerks of the Peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.” It recites that the Houses of Parliament are in the habit of requiring that, previous to the introduction of any bill into parliament for making certain bridges, turnpike roads, cuts, canals, reservoirs, aqueducts, waterworks, navigations, tunnels, archways, railways, piers, ports, harbours, ferries, docks, and other works, to be made under the authority of parliament, certain maps or plans and sections, and books and writings, or extracts or copies of or from certain maps, plans or sections, books and writings, shall be deposited in the office of the clerk of the peace for every

county, riding, or division in England or Ireland, or in the office of the sheriff clerk of every county in Scotland, in which such work is proposed to be made, and also with the parish clerk of every parish in England, the schoolmaster of every parish of Scotland, or in the royal burghs with the town clerk, and the postmaster of the post town in or nearest to every parish in Ireland, in which such work is intended to be made, and with other persons: And that it is expedient that such maps, plans, sections, books, writings, and copies or extracts of and from the same, should be received by the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned. It is therefore enacted:—

Clerks of the peace, &c. to receive the documents herein mentioned, and retain them for the purposes directed by the standing orders of the Houses of Parliament.—That whenever either of the Houses of Parliament shall by its standing orders, already made or hereafter to be made, require that any such maps, plans, sections, books, writings, copies and extracts, or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner, and for the purposes, and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and endorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed. (s. 1.)

Clerks of the Peace, &c. to permit such documents to be inspected or copied by persons interested.—That all persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling, for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom. (s. 2.)

Clerks of the peace, &c. for every omission

to comply with the provisions of this act, liable to the penalty of 5*l.*, to be recovered in a summary way.—That in case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person, shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice: and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited. (s. 3.)

NEW TABLE OF SHERIFFS' FEES.

THE consideration of the amount of the fees to be allowed to undersheriffs under the authority of the 1 Vict. c. 55, being about to be submitted to the consideration of the judges, it may be proper to call attention to the opinion of the Common Law Commissioners on that subject. In their first report they state as follows:

“The fees which are in strictness demandable upon an arrest, were fixed nearly four hundred years ago, by the statute of the 23d King Edward 6, and having received, since that period, no legislative revision, are consequently so trivial as to constitute at the present day, a merely nominal compensation. They consist of 20*d.* payable to the sheriff, and 4*d.* to his bailiff for the arrest, and 4*d.* for the bail bond. A much higher rate indeed, is recognised in practice, it being usual in taxation of costs to allow 1*s.* for the warrant, and for the arrest 10*s.* 6*d.* if it take place in town,

and one guinea if in the country, besides 1*s.* per mile for conveying the defendant to gaol. But these remunerations rest on the precarious basis of custom, unsanctioned by law; and in their aggregate amount besides, appear to be wholly inadequate to the trouble of the arrest, and to the risks which attend the taking of bail. The consequence is, that the officers who indemnify the sheriff, finding the lawful premium of their insurance too low, protect themselves from loss, and secure a profit by taking fees warranted neither by the statute of King Edwd. 6, nor by any practice of the Courts. Beside the warrant and arrest fees (which are payable in the first instance by the plaintiff,) they always, in cases where deposits are not made, take from the party arrested some payment, much exceeding the petty fee authorised by the statute in respect of the bail bond. In London, where the duty of taking bail is discharged by the secondaries themselves, and not as in other counties by the bailiffs, the fees so taken, have been taken *avowedly*, and have been fixed and moderate in their amount, being settled upon a scale proportioned to the sum for which the party is arrested. But the limits prescribed by the secondaries, are secretly exceeded, it is believed, by the subordinate officers who effect the caption; and in other counties, we have not been able to learn that the bailiff, who executes the process and takes the bail, is subject to any restriction of this kind. He is allowed, it would appear, to make his own terms with the defendant; and it is to be feared that he often avails himself of that opportunity to make fraudulent or extortionate demands. The means of doing so with effect, are too much in his power; he is bound, indeed, to accept sufficient bail when offered, but of their sufficiency he is, for the time, necessarily the sole judge; and in rejecting bail to whom there is no reasonable exception, he only incurs the risk of an action, a remote and uncertain remedy, in which the proof is difficult, and to which a needy defendant is not likely to resort. By making captious objections, therefore, to the bail offered, he has almost in every case a safe and ready expedient for compelling the defendant to acquiesce in improper charges. We have reason to believe, too, that even where fraud or extortion, in the stricter sense of those terms, is not attempted, unreasonable exactions of another kind are frequently practised. In general, the defendant requires, independently of his legal rights, some accommodation or indulgence, either in the manner of the arrest, or the arrangement made with respect to bail. In many cases, for example, it is an object to him that he should not be taken into actual custody, but that the officer should be simply referred to his attorney, and that the undertaking of his attorney or of some other person, should be accepted by the officer in lieu of a bail-bond. For compliances of this description, extending sometimes to a reliance on the defendant's own promise, without further security, the officers (as we understand)

are in the habit of receiving considerable gratuities from those whom the law of arrest has placed within their grasp, and sometimes perhaps to an amount much exceeding the fair measure of the risk incurred. This abuse is unquestionably a serious one, yet it is not un-mixed with some compensating advantage. For to be able to purchase indulgencies by which the severity of the law of arrest is materially mitigated, (even though the price demanded be sometimes unreasonable) is an obvious and important benefit to the plaintiff, who has an interest in the strict enforcement of the law, yet as the latter in every case retains his right of ultimate recourse against the sheriff, he is on the whole sufficiently protected, and seldom sustains any loss by the accomodation granted to his adversary."

In a supplement to their First Report the Commissioners recommend :

"That the sheriff shall be entitled to demand of the plaintiff.

	£.	s.	d.
For every warrant which shall be granted to his officer upon any writ of <i>capias</i> , the sum of.....	0	2	6
And for instructing such officer (if required by the plaintiff so to do), beside postage (if any), the further sum of	0	3	6
For an arrest made within one mile of the sheriff's office.....	0	10	6
For an arrest made at a distance of more than one mile from the sheriff's office.....	1	1	0
For conveying the defendant to gaol from the place of arrest, per mile.	0	1	0

That where the defendant shall be discharged from arrest upon a bail-bond, the sheriff shall, previously to such discharge, be entitled to demand from him the following fees :—

If the debt for which the defendant is arrested, shall not exceed £50	0	10	6
..... 100	1	1	0
..... 150	1	11	6
..... 300	2	2	0
..... 400	3	3	0
..... 500	4	4	0
If it shall exceed 500	5	5	0
For the costs of the affidavit of the execution of the bail bond	0	1	0
For filing the bail bond with affidavit of its execution :			
If the arrest be made in London or Middlesex	0	2	0
If in any other place	0	4	0
That where the defendant shall be discharged from arrest upon deposit, the sheriff shall be entitled to demand from him as a fee, for the payment of the deposit into Court, and the return and filing of the writ, the sum of.....	0	2	6
That the sheriff shall be entitled to demand of the plaintiff :			
For every warrant which shall be granted to the officer for execution			

of any writ of distringas, the sum £ s. d.			
of	0	2	6
For the execution of the writ of distringas	0	5	0

ON THE NEW LAW OF DESCENT.

THAT there are many anomalies and absurdities in our judicial code, which require revision and amendment, cannot for a moment be doubted by any person at all conversant with the laws of this country; and within the last few years many legislative enactments have been made to remedy this evil; but that some of them have failed to produce the desired effect may be instanced by the late act of 3 & 4 W. 4, c. 106, regulating the mode of descent of landed property in cases of intestacy; but here, by the bye, it may be observed that this act has been productive of some good by admitting the *half blood* to inherit, whereas, before, the half brother or sister of a purchaser, although by the same father, could never, by any possibility, enjoy the estate by descent: it would rather escheat to the Crown for want of heirs.

By this act parents are become capable of inheriting immediately from their issue, provided the latter happens to be a purchaser, in either of the legal significations defined by that act; but it is a singular circumstance that the father should be the *first*, and the mother the *last* to inherit in the table of descents as it now stands.

It is well known that as the law before stood, a parent, or indeed any lineal ancestor (as such), could never inherit from the issue; for by the feudal system (which governed the law of descents) the estate is legally presumed to have been derived from the ancestor, and of course to have already passed through him. There might indeed be cases instanced, and I believe some have occurred, where a parent became heir to his own offspring, but in that case he took by *collateral*, and not by *immediate* descent.

As the act now under notice has rendered parents eligible to take immediately by descent from their issue, there is certainly a degree of hardship attached to the *almost* entire exclusion of the mother, who, as I have before stated, is the *last* to inherit, except indeed her issue by another husband, who, by the 9th section of the act, are to take after her. For example, I will suppose the case of a person (the only child of his father) purchasing lands, and afterwards dying intestate and unmarried, leaving his mother, a half brother and sister (her issue by a second marriage), also a fourth cousin (half blood), a descendant of his paternal great-great-grandfather, and a second cousin, a descendant of his paternal grandmother (half blood), his only known relatives: as the law now stands, the fourth cousin, notwithstanding he is of the half blood, is the heir to the *propositus*; and supposing such fourth

cousin were not in existence, then the second cousin, the descendant of the paternal grandmother (half blood) would take, to the exclusion of the mother and the half brother and sister of the deceased, who would take successively after her, the sister of course inheriting on the supposition of the brother's intestacy and dying without issue.

Although it might not be policy to allow the half blood *ex parte materna*, generally to inherit before a remote heir (whether of the whole or half blood) *ex parte paterna*, yet I repeat that it is a great hardship that the mother, and also her issue, who are by nature more nearly allied to the deceased than a half brother or sister on the part of the father, should be excluded in favor of a very remote heir *ex parte paterna*, and perhaps likewise of the half blood, as in the case above instanced.

It is much to be regretted that the Real Property Commissioners, or the framers of the act, did not take this view of the case, or that the legislature do not now pass an act, declaring that the mother shall be placed in a nearer position, say immediately after failure of the descendants of the father, and that the brothers and sisters of the half blood, shall take immediately after the failure of the issue of the father, and the demise of their own mother; and it might be therein provided, that in default of issue of such half blood, the descendant shall revert to and be traced through the paternal line in the same course as at present. I need scarcely add that these observations apply to cases only where the half brother was himself the purchaser, and not to property descended to him from his paternal ancestor, of whose blood the mother or her second issue contains no portion.

D. W.

ON THE LIMITATIONS TO BAR DOWER.

Sir,

THERE appears to me an impropriety, since the new Dower Act, in keeping up the old form of uses for the prevention of dower. I will therefore submit to you what I should consider an amended form, and then give my reasons for thinking so. I do this as I know that in my own neighbourhood, and in drafts settled by eminent counsel within these few weeks, the old form has been adhered to.

"To such uses, upon such trusts, and to and for such intents and purposes, and in such manner in all respects as the said [*purchaser*] shall from time to time by any deed or deeds duly executed, with or without power of revocation and new appointment, direct, limit, or appoint; and in default of and until such direction, limitation, or appointment, and so far as such disposition, if any, shall not extend, to the use of the said [*purchaser*] and his assigns during the joint natural lives of himself and his present wife; and from and after the

determination of that estate by forfeiture or otherwise, to the use of the said [*trustee*], his executors and administrators, during the joint natural lives of the said [*purchaser*] and his said wife, in trust for him the said [*purchaser*] and his assigns; and from and after the determination of that estate, to the use of the said [*purchaser*], his heirs and assigns for ever."

The object which was sought to be, and was in fact attained by the old uses, was the prevention of dower in the present and all future wives of the purchaser, which was effected by giving him an estate for life and a remainder in fee, with an interposed estate to prevent their coalescing. Under the 2d section of the Dower Act, that form will not bar the dower of a wife taken since 1833, because the interest of the husband is "partly legal and partly equitable," "equal to an estate of inheritance in possession."

It is only therefore as against a wife taken before 1834 (*ergo*, a present wife), that the old uses will be effectual; and it seems therefore unscientific and inartificial to keep the remainder in fee distinct from the life estate of the purchaser, after the necessity for such separation has ceased by the death of such wife.

I shall be glad if any of your readers will take the trouble to consider this subject, and to point out any fallacy in my premises or deductions.

With reference also to the declaration against dower, which, under the act, is made effectual to include any wife taken since 1833, there are various opinions as to the propriety or impropriety of inserting it, without special instructions, as a common and usual form in conveyances. The practice ought to be uniform, and I should like to see the reasons on each side, moral as well as legal, fairly pointed out, and, if I may use the expression, a balance struck between them.

While upon this subject, I will just remark that I have seen an opinion of a conveyancer of repute, in which, however, I by no means coincide, suggesting a doubt whether the insertion of such a declaration may not render the conveyance liable to an extra deed stamp.

A. C. V.

UNITED LAW CLERKS' SOCIETY.

WE are glad to hear that the prosperity of the United Law Clerks' Society continues to increase. It may be stated for the information of some of our readers, that the objects of the Society are principally to form a general fund for the relief of the members in sickness or infirmity, and a casual fund to aid them and their families, by loans or donations.

From the Fifth Annual Report, the following particulars are extracted:—

"On reference to the accounts with the

Commissioners of the National Debt, the total investment now amounts to 1,386*l.* 4*s.* 5*d.*, being, within a few pounds, (retained for necessary expenses,) the whole available capital of the Society, set apart from the risk of improvident speculation, and yielding a dividend of upwards of 45*l.* per annum, which, every half year, becomes incorporated with the principal, giving a profit in the nature of compound interest.

"It also becomes necessary to advert to the success which has attended the Anniversary Dinners, at which many members of the profession have been present and taken a zealous interest in the proceedings; and it is a gratifying fact to state that it would have been impossible to have allowed such liberal benefits in sickness and at death, had not the funds been materially increased by the receipt of annual and other donations subscribed on those occasions; and upon a calculation of the amount received from the profession, it appears the total sum amounts to nearly 800*l.*, to which must be added annual donors of various sums, to the number of ninety, producing an annual income of about 116*l.* This valuable assistance, cheerfully and liberally rendered at a time when the Society was struggling to obtain a capital, has so far enabled it to accomplish that important object, and it must be admitted that the greatest part of the investment in the National Debt Office is made up with the money obtained through the source already referred to; but it will occur to the donors of this Society that the present capital, in the creation of which there has been so much exertion, cannot either be preserved or increased, without a continuance of their powerful influence and support.

"It is impossible now to enter into a detail of the many advantages which the Society has derived from possessing an invested capital, and which renders it, for the future, desirable that under ordinary circumstances, the principal should never be appropriated to meet the liabilities of the society; but, that all such charges should, as hitherto, be paid out of the floating balance maintained from the contributions of its members, and its capital left untouched as a security for the punctual performance of its engagements. It has already been found that the existence of a capital has inspired confidence among the members, and operated with many, as the sole inducement for joining an institution where there is a tangible prospect of obtaining all the benefits it offers.

"It has been considered useful, during the preceding year, to print and circulate an address to the members of the Bar, pointing out the objects of the society and soliciting support; and the secretary is now able to announce as recent donors, the Honorable Mr. Justice Park, and Mr. Justice Bosanquet, Sir William Webb Follett, M. P., and Fitzroy Kelly, Esq., K. C., and other gentlemen of standing and eminent practice; and there is no doubt that a larger share of their patronage would have been obtained had it not been previously secured for another society, having strong claims upon

their support, and consisting principally of their own clerks. In addition to this, another address, confined exclusively to law clerks, has been prepared and circulated in different offices of the profession, and from subsequent applications for admission, the society is induced to hope that some interest on its behalf has been excited among a class of persons hitherto greatly indifferent to the future prospects of themselves and their families."

This result is highly creditable to the law clerks who established the society, and we congratulate them on their success. The manner in which the members of the profession in all its branches, have come forward, clearly shews that its affairs have been judiciously conducted. The managers will act wisely in adhering with strictness to the two main objects of the society above stated, and thus secure the unanimous feeling of the profession in their favor.

NOTICES OF NEW BOOKS.

The Legal Almanac, Remembrancer and Diary, for 1838. London: published for the Proprietors of The Legal Observer, by Richards & Co.

THIS is the fourth year of the publication of the Legal Almanac. It is trusted that the present Edition will receive at least as much encouragement as its predecessors. All the acts of parliament and rules of Court have been examined with a view to point out, day by day, the proceedings to be taken, whether in the Courts or otherwise, wherever the business to be transacted belongs to the profession, directly or incidentally. The dates when the several acts of the last session relating to the law come into operation have been stated both in the Almanac and Diary. The times when the notices for examination and admission of attorneys and solicitors both at Common Law and in Chancery, and the leaving of the examination-papers &c., are also particularly noticed. The holidays at the Law Offices, and the hours of attendance, recently fixed, are also specified.

The professional lists have been corrected to the time of publication, and many of them have been obtained exclusively for the Legal Almanac. The following is a statement of the contents:

The Calendar:—The Superior Courts: Chancery; Queen's Bench; Common Pleas; Exchequer; Judicial Committee of the Privy Council; Admiralty; Ecclesiastical; Bankruptcy; Central Criminal; Insolvent Debtors.—Patent Office;

Record Offices; Registries of Deeds; First Fruits Office; Tenths Office; Commissioners for taking Affidavits.—Holidays: Chancery Offices; Common Law Offices.—Terms and Returns: Law Offices and Times of Attendance: Chancery Offices; Queen's Bench; Common Pleas; Exchequer; Admiralty and Ecclesiastical; Inferior Courts; Offices connected with the Law; Sheriffs' Offices.—Transfer of Stock Days: Post Office Regulations; Quarter Sessions.—Local Courts: Durham; Lancaster; Marshalsea and Palace; Lord Mayor's Court; Sheriffs' Courts.—Magistrates and Law Officers of the City of London.—Police Magistrates and Commissioners.—Poor Law Commissioners.—Tithe Commissioners.—General Register Office of Births, Deaths, and Marriages.—Courts of Request.—Officers of the Houses of Parliament: Lords; Commons; The Bar.—Table of Precedence; King's Counsel and Serjeants; Barristers called, 1836—1837.—Incorporated Law Society.—Provincial Law Societies.—Articled Clerks Examined.—United Law Clerks Society.—Town Clerks.—Clerks of the Peace.—Clerks of Magistrates.—Perpetual Commissioners.—Colonel Judges and Law Officers.—Table of Distribution of Personal Estate.—Table of Rates of Insurance, &c. Ad valorem Stamps.—Diary for 1838.

SELECTIONS FROM CORRESPONDENCE.

DEBTS OF MARRIED WOMEN.

To the Editor of the Legal Observer.

Sir,

I beg leave to allude to a notice by G. M. in your last volume, page 452, in answering an inquiry of an "articled clerk," in which he asserts "that the only cases where a married woman can be sued are, transportation of husband—abjuration of the realm,—adultery with separate maintenance, and in cases of an alien husband abroad, and the wife contracting debts as a feme sole."

Now if G. M. will have the goodness to refer to some elementary treatise, or some cases on the subject, he will find that the only cases in which a wife is liable to be sued as a feme sole are, "where the husband is transported, and even though his term has expired, abjuration of the realm, and an alien husband abroad," and in no other. The adultery of the wife does not render *her* liable to be sued, though it takes the responsibility from the husband, if there is a separate maintenance. See *Chitty on Contracts*; 2 B. & C. 555; 3 *Id.* 291; 2 New Rep. 148, and 6 Maule & S. 73.

W. J. M.

[As already announced, we are willing occasionally to insert the papers of our correspondents, when they concisely discuss material points, and refer to authorities; but it is rather too much to expect that we should "look at and examine" all the Treatises and Reports

mentioned in these communications. Our duty appears to be, to moderate asperity, to ascertain the professional fitness of the subject, and keep the matter within proper bounds. Ed.]

SUPERIOR COURTS.

King's Bench.

[Before the Four Judges.]

SETTLEMENT.

Where a party possessed of a copyhold property, had executed a deed vesting that property in trustees for the purpose of settling, in order to satisfy his creditors, and in such trust deed had expressly covenanted to surrender the estate for the purposes of the deed: Held, that he nevertheless had a sufficient estate to enable him to gain a settlement.

Held also, that he was not bound to reside on these premises, but that if he resided on premises in the same parish, it was sufficient.

This was an appeal against an order of the sessions for the removal of a pauper, his wife and family. The pauper had been entitled to a copyhold estate in the parish of Debenham, but being in embarrassed circumstances, he entered into a deed with a covenant to surrender the estate, so as to enable certain parties, thereby appointed, and in whom the estate was thereby declared to be invested, to sell the same, and apply the proceeds for the benefit of his creditors. The pauper did not occupy the property, but resided in another part of the same parish,

Mr. *Thesiger* and Mr. *Dowling*, in support of the order of sessions. The pauper here had no settlement in the appellants' parish; he had parted with the property which gave him a right to claim a settlement. He had been possessed of certain copyhold property within the parish, and he had entered into a covenant to surrender the property, which, in the mean time, was vested in trustees for a special purpose. This covenant was equal in effect for this purpose to an actual surrender. If there had been an actual surrender to a third person, the lord would have been bound to admit him. The estate would then have been clearly out of the tenant. The covenant to surrender was equally effectual in its operation. *The King v. Cregrina*.^a It amounted to a total loss of the right of property. Then again the residence here was not sufficient. The pauper can claim no settlement except by a residence; he must reside on the property as well as in the parish where that property is situated. This was not his property, nor did he reside on it. He was here but a mere naked trustee, and as such could not gain a settlement. *The King v. Oakley*.^b He is not like a guardian in socage, and is not entitled to the same

^a 1 Harr. & Wol. 53.

^b 10 East, 491. But see *Res v. Willey*, 2 Maule & Selw. 504.

advantages. Nor can this case be governed by decisions regarding executors, for the covenantor here had parted with the legal estate, which, in the case of a will, may be said for the purposes of the will, to be in the executor. The title of the covenantor in this case, would be as defective as that of a mortgagee or trustee who did not reside on the premises; and it has been decided, that a mortgagee or trustee, though having a clear interest in the premises, cannot claim a settlement without an actual residence on the premises. *The King v. Holm East Woor.*^c

Mr. Ryland and Mr. Turner, *contra*.—The pauper here had a sufficient interest to confer a settlement. It is sufficient if he has such an interest as is a beneficial interest, and it does not then matter whether he has it in his own right, or that of his wife. *The King v. Dorstone.*^d The pauper need not have a strict legal estate, in order to claim a settlement, but if he must, then he was sufficiently for such a purpose, the owner of the legal estate in the present instance. In *Rex v. Gedington.*^e Mr. Justice Bayley intimated that he should be glad indeed, if a legal estate alone would confer a settlement; but that it was clear that an equitable estate was sufficient for that purpose. This expression of regret by that learned Judge, shewed that the law on this point was too clear to be disputed. At all events the pauper here had a good equitable estate. Then, with respect to the residence, it is not material whether he occupied the premises themselves, provided that he occupied premises in the same parish. He did occupy premises within the parish here, and as he had an estate in the parish over which he possessed a clear *jus proprietatis*, there can be no doubt that he was entitled to a settlement, and that the order for his removal was bad.

Lord Denman, C. J.—The legal estate continuing in this person, I am of opinion that he was not removable. He did not reside on these premises themselves, but it was not necessary that he should do so. As to the covenant to surrender, I think that it did not divest the property so as to make him incapable of claiming a settlement. We do not know that he would or could have been called upon to surrender this property. If called upon, it would only have been in execution of the trusts of the deed; but he might, for aught we know, have been able successfully to defend himself against any call made upon him to complete the surrender. In this state of things, it is sufficient to say, that he was residing in the parish in which he possessed an estate.

Mr. Justice Littledale.—I am entirely of the same opinion. The pauper here had a legal estate, and that is quite sufficient to enable him to gain a settlement. The estate was at that time in possession of certain persons, but for his benefit; and if sold, it would have been

sold for his benefit, in order to enable them to collect and pay off his debts. It is clear, from several passages in Nolan on Poor Laws,^f that a party must have either a legal or an equitable estate; and if so, it is immaterial whether there are any trusts connected with it and vested in third persons. His estate was sufficient here, and so was his residence.

Mr. Justice Patteson.—This case is exactly like that of *Rex v. Dorstone.*^g The pauper there entered into an agreement absolutely to sell, but the conveyance was not absolutely executed. In this case the agreement is to surrender to trustees, who are to sell. In effect the two things are the same. The pauper here had an estate, and he resided within the parish in which it was situated.

Order of removal quashed.—*Rex v. Ardleigh*, T. T. 1837. K. B. F. J.

King's Bench Practice Court.

EXAMINATION OF ATTORNEYS.—LEAVING ARTICLES.

Articles of clerkship expiring on the 1st June, but the time of depositing them, together with the certificate of service, at the Hall of the Incorporated Law Society, pursuant to the rules of E. T. 6 W. 4, having expired on the 29th May, and the examination day being the 5th June, the Court will grant an order on the 2nd June, desiring the articles to be received.

W. Alexander moved that an order might be directed to the examiners of attorneys, desiring them to receive the articles of clerkship of Mr. Cooper, and to examine him in the present term, with a view to his admission. By one of the rules made by the examiners, it was required, that the articles of clerkship, and answers to questions, touching the service and conduct of persons applying to be admitted, should be left with the Secretary to the Incorporated Law Society at the Hall in Chancery Lane on or before the 29th May. Mr. Cooper's articles, it appeared, did not expire until the 1st June, in consequence of which, the deposit of the articles, as well as the certificate of service by the gentleman to whom he had been articulated, was prevented at the appointed time, and the examiners had therefore refused to receive the articles, although the day for examination was not until the 5th day of the month. The present application was made on the 2d, and it was submitted that under the circumstances, the Court will grant the order.

Coleridge, J., after consideration, said, that under the special circumstances, the Court would issue the order.

Order granted.—*Ex parte Cooper*, T. T. 1837. K. B. P. C.^h

^f Pp. 92 & 105.

^g 1 East, 296.

^h The articles of clerkship and answers as to due service, so far as the service has extended, should be left within the first seven days of Term, and a certificate of the subsequent service will afterwards be received by the examiners. Ed.

^a 16 East, 127.

^d 1 East, 296.

^e 2 Barn. & Cress. 129.

PLEA.—REVIEW OF DECISION AT CHAMBERS.

The Court will not interpose to relieve the defendant from the payment of costs before the action is tried, when the defendant claims by the indorsement on the writ, a sum recoverable in the Court of Requests, but will leave the defendant to apply for leave to enter a suggestion.

Where judgment is signed as for want of a plea on the 23d, a summons to set it aside is taken out on the 25th, but is discharged on the 26th, an application to the Court on the 29th is in time.

A plea of "never did promise" may be treated as a nullity in debt.

A Judge sitting in the Bail Court may review the decision of a Judge in Chambers.

Payne moved for a rule nisi for signing interlocutory judgment in this case for irregularity, and for the discharge of the defendant from paying any costs on his handing over 2*l.* 18*s.* to the plaintiff. It was an action of debt, and by the indorsement on the writ of summons, the plaintiff claimed 2*l.* 18*s.* for debt, and 1*l.* 10*s.* for costs. The defendant pleaded, that he never did promise, upon which the plaintiff signed judgment as for want of a plea. It was submitted, that as the amount claimed on the writ was recoverable in the Court of Requests, within the jurisdiction of which the cause of action had arisen, the defendant ought to be discharged, on payment of the sum claimed, from paying any costs in the Superior Court. In the event of the plaintiff recovering the sum claimed by the cause proceeding, the defendant, by application to the Court, could relieve himself of all costs, and if the present application were granted, much expense and litigation would be saved. With regard to the plea, it was urged, the plaintiff had no right to treat it as a nullity.

Williams, J., said, that a rule might be taken as to the plea, but upon the other part of the application it must be refused. That must be the subject of a suggestion under the Court of Requests Act, at a future stage of the proceedings.

Heaton subsequently shewed cause, and objected that the defendant was out of time in his application. Judgment was signed on the 23d May; a summons to set it aside was taken out on the 25th, and was dismissed on the 26th, and the present rule was not obtained until the 29th.

Coleridge, J., thought that under the circumstances, the application was early enough.

Heaton then urged, that as the matter had been disposed of by a Judge at Chambers, a Judge sitting in the Bail Court was not competent to review his decision.

Coleridge, J., said, that it was the continual practice of the Court to entertain such motions.

Heaton then contended, that the plaintiff had rightly treated the plea as a nullity. In *Stafford v. Little*, Barnes, 257, which was *assumpsit*, a plea of *nil debet* was held to be a nullity; and in *Perry v. Fisher*, 6 East, 549, in which the case of *Lockhart v. Mackreth*, 5 T.

R. 661, was recognised, a similar opinion was given with regard to a plea of *non assumpsit* in an action of debt. The Court of Common Pleas also, in *Brennan v. Egan*, 4 Taunt. 164, gave a like decision, and declared that such a plea might be treated as a nullity.

Payne, *contra*, contended, that as all these cases were before the new pleading rules, they could not be considered as authorities. The plaintiff ought to have demurred to the plea, or to have applied to set it aside. Since the new rules, the plea must be considered to be only an informal mode of pleading "never was indebted." In *Aaron v. Chaundy*, 2 B. & C. 562, which was *assumpsit* on a promissory note, the defendant pleaded *non assumpsit*, and having made up the issue, ruled the plaintiff to enter it, and by mistake he entered a plea of *not guilty*. The defendant signed judgment of *non pros.*, but the Court of King's Bench decided, that the plea entered was substantially the same as that which was pleaded, and set aside the judgment.

Coleridge, J., pointed out that the case cited was different from this; because the defendant in pleading *non assumpsit* to debt, denied something that was not alleged in the declaration. The opinion of a Judge at Chambers would of course have great weight with a Judge sitting in this Court, but the Judges would be very sorry if what took place at Chambers should not be fully and freely reviewed in Court. Nothing could be more clearly distinguishable than *Aaron v. Chaundy*, from this case. There a proper plea was pleaded, although that which was entered was informal. There were instances where "not guilty" in *assumpsit*, which was an action on the case, raised the question in an informal manner: but the distinction between *assumpsit* and debt was well ascertained.

Rule discharged.—*King v. Myers*, T. T. 1837. K. B. P. C.

ATTORNEY.—DEEDS.—SUMMARY APPLICATION.

An attorney may be called upon summarily to deliver up monies received by him in respect of mortgages, for which he has prepared the deeds.

Hoggins had obtained a rule, calling on an attorney of this Court to shew cause why he should not pay over a balance of 200*l.*, remaining in his hands, to the applicant; and deliver up all deeds and papers in his custody belonging to the applicant. It appeared that the attorney had been employed by the applicant to prepare certain deeds of mortgage, to raise two sums of 300*l.* and 1500*l.* The deeds were prepared, and the two sums paid by the mortgagee to the attorney. The latter, by desire of the applicant, had satisfied various claims, and the balance now left in his hands was 200*l.*, and he had refused to give it up, or to deliver any bill of costs.

Creswell now shewed cause against the rule,

and urged that this was not a case in which the Court would summarily interfere. It had been considered that the Court had gone to the extreme verge of the law in the case of *In re Aitkin*, 4 B. & Ald. 47; and in many subsequent cases it had been doubted whether they had not gone too far. The Court, in *Ex parte Schallbaker*, 1 D. P. C. 182, refused to interfere under circumstances similar to those of the present case. There it had been decided that where bills had been deposited with an attorney, and he had advanced money on them, and refused to account, the Court would not summarily interfere to compel him to do so. So also *In the matter of Charles Bonner*, 1 N. & M. 555, the Court would not compel an attorney to pay an amount he had received, he having been employed by both vendor and purchaser, and having received the purchase money which he had omitted to pay over, and then having been bankrupt and obtained a certificate, unless fraud could be shewn. *In re Murray*, 1 Russ. 519, was distinguishable from this case, for there the object of the application was principally the delivery of deeds. Here it was not shewn by the affidavits, either that deeds or money were in the hands of the attorney. The only object of the applicant was to obtain a debtor and creditor account, but which he had no right, under the circumstances, to demand.

Hoggins, contra, said, that the judgment of *Abbott, C. J.* in *In re Aitkin*, was peculiarly applicable here. His Lordship said,—"The question in this case is, whether the Court will compel an attorney to do that which in justice he ought to do? Now the rule by which the Court are to be governed, in exercising this summary jurisdiction over its officers, seems to me to be this; where an attorney is employed in a matter wholly unconnected with his professional character, the Court will not interfere in a summary way to compel him to execute faithfully the trust reposed in him. But when the employer is so connected with his professional character, as to afford a presumption that his character formed the ground of his employment by the client, then the Court will exercise this jurisdiction. And the case where the Court compelled an attorney to deliver over deeds placed in his hands for the purpose of making a conveyance, proceeds upon this ground. For inasmuch as a conveyance requires knowledge of law, the trust is reposed by the client in the party, in respect of his being an attorney." That authority, therefore, was directly in favour of the present application. The same principle was admitted by *Patteson, J.*, in the case of *In re Schallocker*, although the particular circumstances of that case did not permit the Court to exercise its summary authority. *In re Murray*, already cited, was an authority in support of the application; and in the case of *In re Woolfe and others v. —*, 2 Chit. Rep. 63, the Court held that a summary application against an attorney to compel him to deliver up monies received by him, though he was not employed in any suit, could be supported.

Culridge, J., was of opinion, that the rule must be absolute. *In re Aitkin*, had been the authority for many decisions, and he had never heard that it was not good law. The question was, whether the attorney was employed in consequence of his being an attorney? If he was so employed, he might be made amenable for his conduct as an officer of the Court. He received here, the money, because he prepared the deeds, and it was evident that he was employed to prepare the deeds because he was an attorney. The rule must therefore be absolute.

Rule absolute.—*Ex parte Cripwell*, T. T. 1837. K. B. P. C.

Exchequer.

BANKRUPT DEFENDANTS.—6 G. 4, c. 16, s. 15.
—DISCONTINUANCE.

Plaintiffs in actions, where the defendants have become bankrupts, will not be allowed to discontinue the actions, and proceed under the fiat, under the 15th section of the General Bankrupt Act, 6 G. 4, c. 16, unless they have either proved their debt under the commission, or have had their claim entered on the proceedings.

Crowder had obtained a rule, calling on the plaintiff to shew cause why the defendant should not be at liberty to sign judgment for want of a replication; and why a rule, which had been obtained by the plaintiff for staying proceedings, should not be rescinded; against which,

Platt and Hughes shewed cause.—It was an action of debt for goods sold and delivered, and for money due upon an account stated with the bankrupt, before his bankruptcy, and subsequently with the plaintiffs, as assignees, and the defendant pleaded *nunquam indebtedus* and a set-off. The defendant became bankrupt on the 4th November, and no replication was given; but on the 5th the plaintiffs served the defendant with notice that they did not intend to go on further against him in the action; but that they elected to proceed under the commission. The defendant, on the 9th, ruled the plaintiffs to reply; but on the 14th they applied to the Court, and obtained a rule to stay proceedings, on an affidavit that they had relinquished the action, and that they intended to prove the debt under the fiat. The present rule had been obtained on the 13th January following, on an affidavit stating that the plaintiff's attorney had taken out a summons for setting aside proceedings, on the ground that the action abated by reason of the defendant's bankruptcy; and that it was heard before Mr. Baron *Bulland*, who decided that the action did not abate; that on the 9th November the plaintiff's attorney was served with a rule to reply, but that no replication was given, but the rule to stay proceedings was obtained; and also that on the 4th January the bankrupt *Last* attended before the commissioners, where he and the defendant

were both examined; and that the former stated that the defendant's account was quite correct, and that there was a balance due to the defendant, and that in consequence of this the plaintiffs were not allowed to prove any debt. It was now pointed out that the question arose on the 59th section of the 6 G. 4, c. 16, which provided that no creditor who had brought any action against any bankrupt in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against the bankrupt, should prove a debt under the commission, or have any claim entered upon the proceedings under it, without relinquishing the action; and that the proving or claiming a debt under the commission by any creditor, should be deemed an election by him to take the benefit of the commission in respect of the debt so claimed. The object of this provision was to afford mutual protection to the parties. The claiming a debt under the commission was declared to be a relinquishment of the action, and the Court would not suffer judgment for want of a replication to be signed, when the plaintiffs had no power to proceed. *Es parte Wooller*, 1 Rose B. C. 394, was a case which arose under the 49 G. 3, c. 121, s. 24; and the commissioners had there rejected a creditor's claim, on the ground that he ought to have produced the rule for the discontinuance of his action, before he was allowed to proceed under the commission. The Lord Chancellor there said, that if the creditor discontinued, he did so under the uncertainty whether his claim would be admitted or not; while by the act of parliament, on the other hand, the proof or claim itself operated as a discontinuance. The effect of the case of *Kemp v. Potter*, 6 Taunt. 549, was only to shew that where the plaintiff elected to proceed under the commission, the defendant was entitled to have some entry of that circumstance on the record. If the defendant in this case had required it, that might have been done; but after the notice which had been given on the 5th November, and the rule to stay proceedings, the plaintiffs were clearly precluded from proceeding any further with the action.

Crowder, in support of the rule, contended that the object which the legislature had in view, was to prevent the plaintiff from proceeding in two ways at the same time. Where the statute provided that the "claiming" a debt under the commission should be deemed an election by the creditor to take the benefit of the commission in respect of that debt, it did not mean merely the demanding of the debt, but a specific sum must be shewn to be due, and it must be of such a nature that some entry of it must appear on the record of the proceedings of the commissioners. A fictitious allegation would not be sufficient; otherwise any person who had wrongfully commenced an action, might, by such a proceeding, release himself from all liability to costs.

Parke, B., said, that in the case of *Es parte Frish*, 1 Glyn. & J. 165, it was held that a per-

son tendering the proof or claim of a debt under a commission, was entitled to the judgment of the commissioners before he discharged the bankrupt or relinquished his action.

Cur. adv. vult

Lord Abinger, C. B., gave judgment, and said that the simple question was, whether the plaintiffs had done enough to constitute an election to prove under a commission within the meaning of the Bankrupt Act. The Court, upon consideration, thought that before an application could be made to discontinue an action, a debt must have been proved, or some entry of the claim must have been made on the proceedings before the commissioners. The words of the act were, that no creditor who had brought any action in respect of any demand prior to the bankruptcy of the defendant, or which might have been proved as a debt under the commission, should "prove a debt under the commission, or have any claim entered on the proceedings under such commission," without relinquishing his action. Therefore, under these words, the Court were of opinion that the plaintiffs could not discontinue unless they had either proved their debt, or had had their claim entered. Neither had been done, and the Court did not think that there would be any injustice in saying that they could not discontinue the action without payment of costs. That part of the rule, however, which prayed judgment, must be discharged; but the order to stay proceedings must be rescinded.

Rule accordingly.—*Augards and others, assignees of Last, a bankrupt, v. Thompson*, T. T. 1837.—Excheq.

THE EDITOR'S LETTER BOX.

We have received the list of Messrs. Clarke and Lewis, containing the names of all the newspapers published in England and Wales, Scotland and Ireland, distinguishing the political feeling of each paper. This list, we have no doubt, will be useful to many professional men. A List of Members of Parliament, distinguishing their opinions, is also comprised in the publication.

J., who inquires in the last vol. p. 468, what became of the case of *Bengough v. Eldridge*, is referred to the report of it on appeal to the House of Lords, under the title of *Cadell v. Palmer*, 1 Clark & Finnelly, 372.

The Letter of N. will probably appear next week.

We regret that some further information, which we have received for the *Legal Almanac*, did not arrive in time for insertion. In several instances, however, our Correspondents will observe that we have from other sources anticipated their wishes.

Thursday the 16th Nov. (as we anticipated) has been fixed for the *Examination* of persons applying to be admitted as attorneys.

The Legal Observer.

SATURDAY, NOVEMBER 11, 1837.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HOMAT.

"THE BENCH AND THE BAR."*

It has been one of the principles on which this work has been conducted since its commencement, that our contemporaries should be sacred from all personal remark. The Bench is perhaps more within our range, as Legal Censors, than the Bar, but even here we have always felt we trod on dangerous ground, and it has been no light cause that has ever induced us to notice the Judges of the Land, either for censure or for praise. To avail ourselves of our professional opportunities to drag before the indiscriminate gaze of the vulgar, the failings, the personal peculiarities, the details relating to the private lives of these eminent persons, would be impertinent and indecent. Once removed from the Bench, it has been our province to record the events of their lives, and sum up their judicial character; but so long as they continued to exercise their judicial functions, we have considered it our duty to support the general administration of justice, and (except where some great public principle was involved, to which all considerations should bow,) not call attention to individual faults. But if this is our feeling as to the Judges, who,

"Secure of their existence,
"Smile at the drawn dagger, and defy its point,"

it rises with ten-fold strength with reference to the Bar. We know on what slender threads professional reputation hangs, and how easily it is injured. For this reason we have ever abstained from

all remark whatever on our brethren of the Bar. It would, indeed, be easy for us to furnish sketches of their lives and characters, but we could never reconcile it to our feelings to attempt it. We might thus materially injure the best prospects, even with innocent intentions. We should be turning the freedom of professional intercourse to an unfair account, and uselessly tearing aside that curtain which properly separates the profession from the public. We have even felt some delicacy in dealing with anything like severity with the literary labours of our learned friends. Walter Scott has pointed out as one of the peculiar miseries of a Reviewer's life, the meeting a victim, whose book you have dreadfully mauled, at some friendly dinner party; and this is a calamity to which we are, alas! particularly exposed. Still to this extent we have a duty to perform to the profession and the public. If a man writes a book, he must take the consequences; but even here we much prefer bringing before our readers a general statement of the information to be found in the work, than scrutinizing its contents very closely. There are very few law books which are not, at any rate, the result of considerable labour; and we confess it would give us a severe pang, when we had a new treatise by a new author placed in our hands, to have to do our best to strangle it in the cradle. It is only, therefore, in very gross cases, such as Mr. Hovenden's Blackstone, that we feel our critical bile called forth.

These remarks have been suggested by the work the title of which we have given below, and which we have read with displeasure, amounting to disgust. It professes to give an account of all the eminent men on the Bench and at the Bar, who have lived in the present century—at least, we conceive that this is the limit which the

* The Bench and Bar, by the Author of "Random Recollections of the Lords and Commons." In 2 vols. 1837.

the author has given himself; but we regret to say that in every page he shews himself totally unfit for this self-imposed task. He seems to have gone into the Courts of Law, noted down the personal appearance of the persons he chose to attempt to describe,—and even in this he often blunders egregiously,—collected some floating anecdotes relating to them, without inquiring into their truth, and which generally pander to popular prejudices,—span out his number of pages on paper, and given this to the public as a sufficient work on the Bench and the Bar.

We have only one consolation in finishing this work,—it is, that the writer is not a member of the profession, which is sufficiently evident. He seems to have some liveliness, and some power of description; but that he is totally unfit for his present undertaking we shall proceed to shew. He is, indeed, more ignorant and more careless than we thought possible for any one venturing on such a work. He seems to have put down anything that any one told him, without thinking or inquiring whether it were true or not. He seems not to have cared about the accuracy of names or dates, or to have wished to give his volumes even the colour of authenticity. Our great mortification, however, is, that in many quarters and by many persons his work will be taken for gospel; and it is this feeling which has roused us to shew, as far as in us lies, that it is wholly undeserving of credit or attention. We can conscientiously give it this general character: we shall now proceed to support our judgment by mentioning a few of the most glaring proofs of ignorance and misrepresentation. These we shall note down as they occur in the work.

Speaking of Lord Erskine's first speech, he says—

"The effect which his speech on that occasion produced, and the impression it made, even on the minds of the attorneys, who are not always remarkable for their appreciation of the loftiest order of eloquence, was so great, that no fewer than thirty of those attorneys put retainers into his hands before he left the Court." Vol. 1, p. 58.

Erskine certainly distinguished himself on his first speech, but that thirty attorneys instantly retained him is ridiculous. Besides, we can inform the writer that a counsel is not retained by "putting a retainer into his hands in Court," but by going to his chambers and consulting his clerk. This ignorance might be pardoned;

what, however, shall we say to the following?

Still speaking of Erskine, he says—

"His knowledge of the law was neither varied nor profound. He often committed egregious blunders from this cause, though the splendour of his parts, as an orator, diverted attention from them. Mr. Thelwall stated to me, that the junior counsel, Mr. Gibbs, was immeasurably Mr. Erskine's superior, both as a lawyer and a logician: indeed, Mr. Thelwall thought the latter gentleman unequalled, in those respects, by any of his then contemporaries, though he never afterwards rose to any distinction. He was one of the many instances which occur in every profession, and in every walk of life, of merit not meeting its due reward." Vol. 1, p. 65.

It so happened, however, that this Mr. Gibbs was not one of these "many instances," but was made Solicitor and Attorney General, and afterwards Chief Justice of the Common Pleas, and was generally known by the name of Sir Vicary Gibbs; and should, in fact, have had the additional honour of being described by the writer himself, if his work had been at all complete.

Of Lord Ellenborough, he says—

"Though well known before he brought himself into special notice by the circumstances attending the trial of Mr. Hone, in 1817." Vol. 1, p. 68.

Surely a man who played so distinguished a part as Lord Ellenborough was sufficiently brought into notice before Hone's trial. This, however, was the only vulgar anecdote relating to him that happened to come to the author's ears.

Of Lord Tenterden, he says—

"As a barrister he never distinguished himself. He was known by the profession to be an excellent lawyer, but he wanted those more flashy qualities necessary to give a man any general reputation at the bar."

Lord Tenterden, as Mr. Abbott, enjoyed at the Bar the greatest reputation. Because he had no silk gown before his elevation to the Bench, the author ignorantly jumps to the contrary conclusion.

Of Lord Eldon, he says—

"Penniless himself, and his bride as portionless as the greatest fortune haters could wish, both came, as most poor people in a certain rank of life do, to London; where, after much meditation as to what employment he should betake himself, to earn the means of subsistence for himself and his wife, he determined to apply himself to the study of the law." p. 90.

This very romantic story would have been proved to be all fiction by any Peerage. Lord Eldon married *after* he was called to the Bar.

And of the Bar, he says—

"Often would counsel of the first rank charge their clients forty or fifty guineas for having risen in their seats to remind him (Lord Eldon) that he had a certain case before him, and to express a hope that he would do something in the case at his earliest convenience."

Forty or fifty guineas for a motion of course!

Of Lord Brougham—

"His practice at the bar was extensive: it was very lucrative also. I am confident that for *ten or twelve* years previous to his elevation to the bench, it could not have averaged less than 15,000*l.* per annum." p. 110.

We much doubt whether any barrister's income, independent of his official salary, has amounted to the sum mentioned. But certainly Lord Brougham, although in good practice at the Bar, never made this sum.

Of Lord Lyndhurst, he says—

"In 1826 he was raised to the dignity of Master of the Rolls. Nor did his promotion long rest there. In 1829 he was raised to the very highest station a subject can fill: on the resignation of the great seal by Lord Eldon, in that year, Sir John was made Lord Chancellor, and raised to the dignity of a peer of the realm, under the title of Baron Lyndhurst. He did not, however, long retain the seals. The dissolution of the Tory government, in 1830, ejected him, as a matter of course, from the woolsack, and the Court of Chancery;" and a little further on, "he applied to Earl Grey, in 1831, for the situation of Chief Baron of the Exchequer." p. 147.

Lord Lyndhurst received the great seal for the first time in April 1827, and resigned it in November 1830, and the Chief Baronship was not given to him on his own application. Equally incorrect is the description of his Lordship's person when he says—

"It has much of a feminine character; his features are small and regular." p. 156.

Surely no one can call his Lordship's features small or feminine.

Of Mr. Justice Coleridge he says—

"Mr. Coleridge was nephew of the late Mr. S. T. Coleridge; and some time since published a work in two volumes, relative to the life and writings of his uncle." p. 308.

It was not Mr. Justice Coleridge, but Mr. H. N. Coleridge that edited this work.

Of Lord Abinger he says—

"In 1826 he was appointed Attorney Gene-

ral by Mr. Canning, in the room of Sir Charles Wetherell, who had resigned. On that occasion Mr. Scarlett was knighted. On the breaking up of the Goderich administration in the following year, Sir James Scarlett resigned his Attorney Generalship." p. 228.

Lord Abinger was appointed Attorney General in April, 1827, and he did not resign on the breaking up of the Goderich administration, but in 1830, on Lord Grey's coming into office.

Of Mr. Baron Parke he says—

"His practice was *never* extensive, but it was generally of a respectable kind" p. 232.

All our professional readers know that Mr. James Parke had a most extensive practice.

Of Mr. Baron Bolland—

"He was always celebrated among his brethren of the long robe, for the minuteness of his knowledge of *acts of parliament*, which is technically called '*being a black letter lawyer*.'" p. 228.

The author had better not venture on the technicalities of the law. He merely shows that he knows nothing about them.

Of Mr. Baron Alderson—

"As a judge, he has given great satisfaction. Perhaps as an *equity lawyer*, in that class of cases which usually come before the equity side of the Court of Exchequer, he is *unequaled*. Hence he is often singled out from the other judges in his Court, to preside at the trial of those equity cases *regarding which the law is vague, or the cases themselves are involved in unusual difficulties*." p. 247.

Mr. Baron Alderson is a very good common lawyer, but his knowledge of equity, as every one knows, is only moderate, and his practice in general is confined to hearing petitions of course! Speaking of his personal appearance he announces a discovery with much mystery:

"His eyes are very peculiar; they seem us if the one looked a *different way* from the other. His complexion has a tendency to a copper colour, &c." p. 248.

The writer next describes the Judges of the Court of Common Pleas, which he puts *after* the Exchequer; and first, as to Chief Justice Tindal, after stating that he was the successor of Lord Wynford, he continues—

"The only whispers of dissatisfaction ever breathed against the appointment, was in the case of *Lord Eldon*. His Lordship's sole ground of doubt as to the propriety of selecting Sir Nicolas Tindal as the successor of Sir William Best, rested on the accidental circumstance of Sir Nicolas being then, as he still is, an unmarried man. Sir Nicolas did

however, at last receive the appointment with Lord Eldon's concurrence." p. 256.

Lord Eldon had nothing whatever to do with the appointment of Sir Nicolas Tindal. He was appointed by Lord Lyndhurst in 1829. A story relating to another judge has confused the writer.

Of Mr. Justice Vaughan the writer has the impudent assurance to tell as true, with a long dialogue, a very old story, told among others, of Attorney General Noy, which our readers may see in the Life affixed to the last edition of his Maxims.

Of Sir Edward Sugden he says—

"He quitted the Chancery Bar on being appointed, in 1834, by the Wellington and Peel administration, to the office of Lord Chancellor of Ireland. On that occasion he was offered a peerage, but refused it, owing to circumstances of a family nature, to which I need not particularly allude. He suddenly resigned his office, owing to what he conceived an unmerited slight offered by the Lady of the Lord Lieutenant to Lady Sugden. He immediately afterwards returned to England." Vol. 2, p. 36.

Almost all this is incorrect. Sir Edward Sugden was not offered a peerage, and he did not resign on the ground alleged, but went out with Sir Robert Peel's administration.

Of Mr. Spence he says—

"He lately sat for a short time for Reading. In defending his seat for that place before a committee of the House of Commons, he incurred an expense of 5000*l*. I believe I may safely say that the learned gentleman has in consequence come to a resolution never again to aspire to a seat in the legislature." p. 239.

Mr. Spence, after having been unseated for Reading, was returned for Ripon, chiefly, we believe, through the personal friendship of the Vice Chancellor, and sat for the borough whilst that Parliament lasted.

But here we must stop. We are, indeed, half-ashamed at the time we have been employed in pointing out the ignorant blunders of the work before us. But ignorance is by no means the only fault which can be laid at the door of the writer. He has thrust into his book some names which certainly should not be there at all, if his account were fair and impartial, and omitted others much more eminent. The latter class will, however, be much obliged to him, for it can hardly be pleasant to have a minute account given of one's person—to figure as the hero of a Joe Miller, or to have a professed exact account of your income given. To be sure we only smile at such notices as the following :—

Of Mr. Baron Gurney—

"His nose is of the most peaked description I ever saw." Vol. 1.

And of Sir Wm. Follett—

"His nose has *something of what is called* a cock-up conformation." Vol. 2, p. 70.

And of Mr. Erle—

"His nose has an *inclination to what is called* a cock-up form." p. 82.

And of Mr. Tinney—

"His nose in *some measure* partakes of the peaked conformation." p. 120.

But there is much which is more disagreeable and impertinent, and which we, therefore, forbear to quote.

On the whole we regret the publication of this work. It is extremely dull, but still the taste for personality and scandal will probably induce many to read it who may place dependence on it, and the writer may thus answer his end in seasoning a dish, which, rejected by all whose opinions are worth having, may yet be relished by the ignorant and vulgar.

THE PROPERTY LAWYER.

WORKING OF MINES.

WHERE a piece of common had, even before the recent Statute of Limitations, been inclosed for thirty years, a Court of Equity presumed that the inclosure had been made with the consent of all persons interested, and would not allow it to be thrown open. *Sitcay v. Compton*, 1 Vern. 32. And if the lord or his steward had been privy to the encroachment, if it has been made for a short time only, as eleven or twelve years, it will be presumed to have been done with the lord's licence, and until the licence be revoked, or notice given for the encroachment to be thrown up, the lord cannot maintain an action of ejectment. *Doe d. Foley v. Wilson*, 11 East. 56; 3 Stewart's Convey. 278.

So in a recent case, where a lord of a manor who claimed against the tenants the right of property in the mines within the manor, has stood by for a long period, and allowed the tenants without objection to work the mines, and expend large sums of money upon their mining operations, the Court will not assist him by making a decree for an injunction, or an account against the tenants, but will leave him to his legal remedy. We extract the following characteristic passage of Lord Brougham's judgment on this point.

"It is then to be considered whether or not the same *laches* does not disentitle him (the lord) to an account, and I am of opinion that it does. Shall a party stand by and see others laying out their money for thirty or forty

years upon works, without giving them any warning at all,—see all this and say nothing—look on and “make no sign,”—while perhaps the trade is a doubtful or losing concern; and then, when the speculation has proved successful, come for an account, that is, a share of the profits? By no means. Had no ore been got—had the coals found no vent—had the smelting house blazed in vain, and the machinery which the tenants erect with the finest timber trees in the county, growing on the copyhold tenements, failed to drain the field of coal, and to raise a saleable commodity, he never would have asked for an account—he never would have asked that the loss upon the concern might be shared between him and the undertakers. And shall he now be suffered to come into this Court, and going back long before his suit gave the first intimation of his claim, the first warning of the tenant’s danger, invoke the aid of the Court in order to have the profits refunded? He shall not.” *Parrott v. Palmer*, 3 Myl. & K 643.

CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT, 1837.

No. XXIX.

YORK AND ELY JURISDICTION.

1 Vict. c. 53.

This is “An Act to explain and amend an act of the sixth and seventh years of his late Majesty, for extinguishing the secular jurisdiction of the Archbishop of York and the Bishop of Ely in certain liberties in the Counties of York, Nottingham, and Cambridge.” It recites the 6 & 7 W. 4, c. 87. by which it was amongst other things enacted, that all the secular authority of the Bishop of Ely in the Isle of Ely in the county of Cambridge, and all authority of the Chief Justice of Ely, theretofore appointed by the Bishop of Ely, should, from and after the passing of the said act, cease and determine, and all the secular authority of the said bishop should become and be vested in his late Majesty, his heirs and successors; provided always, that nothing therein contained should prevent any justice of the peace then acting for the said Isle from continuing to act as such within the limits of the said jurisdiction as if the said act had not been passed; and it was further enacted, that the county rates for the said Isle of Ely should remain, as theretofore, distinct from the rates for the rest of the county of Cambridge, and should be assessed and levied, and paid and applied, by and under the order and direction of the Justices of the peace for the said Isle, as if the same were a separate county, but in all other respects under the same regulations as were applicable to the rates of other counties in England; and it was further enacted, that no person should, from and after the passing of the said act, be

committed to the gaol at Ely, but all persons who if the said act had not passed, might have been committed to or confined in such gaol, might be committed to and confined in the gaol at Cambridge, and the Justices of the said Isle of Ely should have full power to commit to the said gaol at Cambridge, and all persons who at the time of the passing of the said act should be confined in the said gaol at Ely should, as soon as might be after the passing of the said act, be delivered up by the keeper of the said gaol at Ely to the keeper of the said gaol at Cambridge, together with the warrant or instrument under or by virtue whereof every person should be then detained in custody, and the keeper of the said gaol at Cambridge should receive and detain such persons in custody in the same way as if such persons had originally been committed to his custody:

And reciting that the gaol for the county of Cambridge is not locally situate within the town or borough of Cambridge, but is situate near thereto, and within the parish of Chesterton in the same county, and there is a gaol for the said town or borough which is situate within the precincts of the same: and that it is desirable to prevent any doubt as to the meaning of the said recited act in regard to the gaol to which persons should be committed and removed from the said Isle of Ely, and to declare that by the gaol at Cambridge mentioned in the said act the gaol for the county of Cambridge for the time being was meant and intended: and that by the committal of prisoners from the said Isle of Ely to the said county gaol, and the keeping and maintaining such prisoners there, considerable expence will be occasioned to the said county of Cambridge, and in consequence thereof it may be necessary to enlarge the said gaol for the county of Cambridge; and it is therefore expedient that all expences already occasioned or which may hereafter be occasioned thereby, as well as from the prosecution, trial, punishment, conveyance, and transport of such prisoners, should be charged on the said rates for the said Isle of Ely:

It is therefore declared and enacted as follows:

1. The gaol referred to in recited act declared to be the county gaol; and Ely prisoners may be committed to the county gaol for the time being.

2. All judges, justices, and others acting under any commission of gaol delivery to direct that any person who shall have been committed for any crime from the said Isle of Ely, and who shall thereupon be convicted and sentenced to imprisonment shall be imprisoned either in the gaol or house of correction of the said county of Cambridge, or in any other gaol or house of correction at Ely or Wisbeach, or elsewhere in the said Isle of Ely.

3. Expences payable by the Isle of Ely.

4. Provision for settlement of expences.

5. Justices of the peace for the Isle of Ely to possess the same powers as Justices for counties.

6. Mutual powers given to Justices of the

peace for the county and for the lals to apprehend offenders out of their respective limits.

7. Isle of Ely to be a division of a county.

8. The townships of Feliskirk and Sutton under-Whitstonecliffe, and the townships of Kilburn and Marton Lordship, shall be absolutely removed and separated out of and from the liberty of Ripon, and out of and from the jurisdiction thereof, and become parts of the North Riding of York to all intents and purposes whatsoever, and be solely within the jurisdiction of the said North Riding; any customs or usage to the contrary therefore in anywise notwithstanding.

No. XXX.

BOROUGH RATES.

1 Vic. c. 81.

This is "An Act to provide for the levying of rates in boroughs and towns having Municipal Corporations in England and Wales. It recites that by 6 W. 4, c. 76, authority was given to the council of any borough in certain cases to levy a borough rate, and in certain other cases to levy a watch rate, and the same powers and authorities were thereby given to them for that purpose as by law are given to justices of the peace at sessions with respect to a county rate: and whereas no authority is thereby given to the churchwardens or overseers of the poor of any parish or place, or other persons who may thereby be legally ordered to pay or levy such rate, to pay the same out of the poor rate of such respective parishes or places, or otherwise to levy the same upon the inhabitants thereof:

It is therefore enacted, That in all cases where by the said act or by this act a borough rate or watch rate may be made and levied in any borough, the council of such borough may order the churchwardens and overseers of every parish or place within which such rate may be levied, or such other persons as by law may make a poor rate for any such parish or place within the limits of such borough, to pay the amount of such part and portion of such rate for which such parish or place respectively shall be liable out of the poor rate made and collected or to be made or collected for such parish or place; or the said council, instead of ordering such churchwardens and overseers or other persons to pay the same out of the poor rate, may order them to make and collect a certain pound rate upon and from the occupiers or possessors of all rateable property within which such parish or place, for the amount of the rate for which such parish or place may be liable as aforesaid; and if such churchwardens, overseers, and other persons upon being so ordered to pay such rate out of the poor rate, or to make and collect a pound rate as aforesaid, shall refuse or neglect to do so, the amount thereof may be made and levied on the goods of them or any of them by distress, by virtue of a warrant in that behalf under the hand and seal of the mayor of

such borough, or of any two justices of the peace in and for the same; or if any person liable to pay such pound rate shall neglect or refuse to pay the same, the amount thereof may be levied upon his goods by distress in like manner. (s. 1.)

That it shall be lawful for the council of any such borough, at any time within six calendar months next after the passing of this act, to make and levy a borough rate for the purpose of defraying any expences incurred before the passing of this act in putting in execution the provisions of the said act for regulating corporations; and every such rate shall be made, levied, and recovered in the manner provided by the said act for regulating corporations and by this act. (s. 2.)

That in every case in which any parish or place liable to support its own poor shall be partly within and partly without any such borough, and in the case of every extra-parochial place wholly or partly within any such borough, the council of the borough shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish or any such place which is within the borough, for making, levying, and collecting any such borough rate or watch rate therein; and in every such case of a divided parish or place, if the borough is not liable to the county rate, the justices of the peace having jurisdiction over that part of such parish or place which is not within the borough shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish or place which is not within the borough, for making, levying, and collecting the county rate therein; and the person or persons so respectively to be appointed shall have the like powers vested in him or them, and shall be subject to the same regulations and penalties, for levying and collecting any such borough rate, watch rate, or county rate within that part of such parish or place for which he or they is or are appointed, as if he or they was or were appointed overseer or overseers of the poor under any law or laws now or hereafter to be in force. (s. 3.)

PROFESSIONAL GRIEVANCES.

COUNTRY BANKRUPTCY COMMISSIONERS.

To the Editor of the Legal Observer.

Sir,

FROM your having recently noticed the irregular practice in the Court of Bankruptcy, I was in the hope that you would direct your attention to the general system of that branch of the law. Few but those who, unfortunately, are obliged to have recourse to proceedings in bankruptcy, can form any idea of the vexatious annoyances, delays, trouble, and expense which they are compelled to undergo. A considerable part of these is occasioned by the system of *lists of commissioners*, partial in their formation, unjust and invidious to the profession,

and at the same time injurious to the public at large.

The very objectionable nature of the present plan would be most manifest, if the various lists were examined, and the qualifications of the parties, and their residence pointed out. But one serious inconvenience arising out of this practice is, that of the Chancellor refusing to direct a fiat, except to the list of commissioners which is nearest to the residence of the bankrupt, and thus compelling the petitioning creditor and his solicitor, and probably witnesses, to incur the expense, delay, and trouble of taking a journey of eighty or one hundred miles, and after that, very likely, to find the commissioners not at home, or living at various places and distances.

This I know has frequently happened; and, what is still worse, it may turn out that some of these same favoured commissioners may be the attorneys or professional advisers of the bankrupt himself or his preferred friends, whose interest is adverse to the body of creditors.

An instance has recently occurred where a petitioning creditor in Lancashire applied for a fiat against a party in Ireland, trading to England; which, it was stated at the secretary's office, *must* be directed to the London commissioners, unless it appeared, on petition and affidavit, that the creditors did not reside there; although the bankrupts had published a declaration of insolvency in the London Gazette, and consequently any London creditor, if such existed, might have issued a fiat prior to the country creditor, under a clause in the statute giving that advantage.

Surely this calls for some remedy; and I trust that you will not shrink from an investigation into the grievances complained of.

N.

SELECTIONS FROM CORRESPONDENCE.

LIMITATIONS TO BAR DOWER.

Sir,

In answer to your correspondent A. C. V., p. 10, *ante*, I would observe that there is no positive benefit arising from a stubborn adherence to the old form of barring dower, when it is clearly ascertained that the marriage of the parties happened subsequently to 1833; or in other words "from and after the 1st January, 1834." It was, and still is the practice of the conveyancer, when framing a draft conveyance to bar dower, to insert both forms *ex abundanti cautela*. In the course of a few years the old form will sink into disuetude, in proportion to the less liability there will exist of doubting the fact.

There is another reason why the practice of inserting the old form of barring dower is adhered to at present; namely, to prevent any doubts at any subsequent period that may be raised as to whether a wife, now barred under

the new statute, but at a time so closely approximating the passing of the statute, was or was not really married prior to that event.

F.

FINES AND RECOVERIES ACT.

To the Editor of the Legal Observer.

Sir,

The following difficulty has occurred to me in the construction of this act. In 1830 a devisor devises an estate to *B.* for ninety-nine years, if he should so long live;—remainder to trustees during *B.*'s life, to support contingent remainders;—remainder to the first and other sons of *B.* in tail;—remainder over. *B.* commits a forfeiture; the trustees enter and become seised of all the freehold for *B.*'s life, but as bare trustees merely. The eldest son of *B.* now wishes to destroy the entail. I conceive under the 31st section, the trustees are the protectors of the settlement; and being such, may consent to destroy the entail, without being subject in a Court of Equity to make satisfaction, on the ground of such consent being a breach of trust. *Vide s. 36.* If I am correct, the act seems to have furnished a mode of upsetting family arrangements, that never could have been intended.

MENTOR.

MORTGAGE STAMP.

Sir,

A life policy, and the benefit thereof, is assigned to *A.*, his executors, &c.; and the proviso for redemption is on payment of principal (300*l.*) and interest, and if the mortgagor pay the premiums, and do every other act to keep the policy on foot. There is a power of sale in default of payment, and the mortgagee is to deduct from the proceeds the principal, interest, and costs, and pay over the surplus. The mortgagor covenants to pay the principal and interest, and yearly premiums, and that if he neglect to pay the premiums, and the mortgagee pay them, then he will repay him on demand. The stamp on the deed is 3*l.*; and it is now questioned whether this stamp is, or is not sufficient?

On the one hand it is contended, in the first place, that it is a principle that disbursements for the preservation of the security are not chargeable with duty; and that, if the *ad valorem* duty be paid on the principal sum expressed to be secured, the mortgage will be unimpeachable on account of the insufficiency of the stamp in respect of disbursements;—that if defeated on this ground, the definition of a mortgage being "a conveyance of any property in security; of any money advanced, due, or forborne to be paid"; it may be contended that the above deed is no security for the premiums that may be advanced by the mortgagee, the provision as to application of the proceeds of the sale, allowing only the deduction of principal, interest, and costs, and the surplus to be paid over.

On the other hand it is contended, that the mortgage is plainly a security for the repayment of the premiums that may be advanced by the mortgagee; and that the policy could not be redeemed until the sums so advanced should be repaid; and the principle the other party sets out with, is denied to extend to this case, and is asserted to be only applicable to repairs of an estate, &c. The exception in the Stamp Act of mortgages made as a security for money to be advanced for *insurance against fire*; or for the insurance of lives pursuant to any agreement in any deed, whereby any annuity shall be granted or secured for such lives, is also referred to.

Can any of your numerous subscribers refer me to any case that may decide the point?

J. P.

RE-ADMISSIONS IN THE QUEEN'S BENCH,

The last day of Michaelmas Term, 1837.

Baker, Samuel, the younger, Blagdon, Somerset.
 Brooks, William, Dorset Street, Clapham Road; 12, Henry Street; 18, Bowling-Green Street, Lambeth; and Gravesend.
 Castle, Ambrose, Clarendon Grove, St. Pancras.
 Collier, Thomas Bagnall, Liverpool.
 Cole, Jesse, 14, Upper George Street, Bryanstone Square; 169, Regent Street.
 Day, Joseph Addison, Crewkern, Somerset; France, and parts abroad; and Snows Fields London.
 Dunsford, Henry, the younger, Tiverton, Devon.
 Dickinson, Job Horatio, Manchester; and Lancaster.
 Delafons, Charles Edward, Plymouth, Devon.
 Gude, George, Newman's Row, Lincoln's Inn Fields; and 13, Robert Street, Bedford Row.
 Haynes, Thomas William, 11, Rathbone Place, Oxford Street; 51, Earnest Street, Everett Street, Brunswick Square; Downend, Mangotsfield, Gloucester.
 Hargreaves, Thomas, the younger, Liverpool; Grays Inn; and Verulam Buildings.
 Jordan, John, Pyle Hill, Greenham, near Newbury, Berks; and Whitchurch, Salop.
 Jackson, George, Mortimer Place, Old Kent Road.
 Outhwaite, Thomas, 103, Rue de Sevres, Faubourg, St. Germain, Paris.
 Powell, Walter, Miln Lane, Tooley Street, Southwark; now of Martin's Lane, Cannon Street.
 Robinson, Henry, the younger, York.
 Robberds, Walter James, City of Norwich.
 Sutton, William Lucas, 30, Cold Bath Square; and Cork, Ireland.
 Smith, James, 28, St. John's Wood Terrace, Regent's Park; 10, Cumberland Place, New Road; 65, Upper Stamford Street; 2, Westbourn Place, Pimlico.

Wickings, William, 20, Abchurch Lane; late of Castle Street, Budge Row; K. B. Prison; Charles Street, Camberwell; New Road; New Church Road, Camberwell; Park Place, Hill Street, Walworth.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—PARTIES.—AMENDMENT.

In an information against a corporation, for the better administration of a charity, some of the relators, as being members of the corporation, but without assigning any other reason, asked that the information might be amended by striking out their names: Held, that the record could not be altered, except for discovery of matter arising after the filing of the information; but that there was nothing repugnant in the circumstance of members of the corporation being relators in an information against the corporation.

This was an information and bill filed in March last, with the sanction of the Attorney General, by eight relators, inhabitants of the borough of Evesham, in Worcestershire, against the new corporation of that borough, and others, for the better administration of certain charity estates which had been vested, upon trust, in the old corporation, up to the passing of the new Act for regulating Municipal Corporations. It happened that seven of the eight relators were members of the town council of that borough. The solicitors who gave instructions for drawing the information, wrote a letter to the solicitor for the defendants, alleging therein that, after it had been engrossed and filed, they discovered that seven of the relators were members of the corporation, and proposing to him, that as it would appear unseemly to make those persons relators, who were defendants in their corporate capacity, he would consent to an amendment of the information by striking out the names of the seven relators, retaining the eighth name, whereby the delay and expense, as they stated, of a new information, would be saved to all parties. They at the same time obtained an order of course at the Rolls for the proposed amendment; and having the sanction of the Attorney General thereto, but not his signature, they applied at the Six Clerks' Office to have the names struck out, which was accordingly done, after a suggestion from the proper officer there of a doubt of the regularity of the proceeding. The solicitor for the defendants, instead of consenting to the amendment, gave notice forthwith to the solicitors for the information of a motion to take the information off the file for irregularity. The latter, on the other hand, gave the former notice of motion for a special order for the amendment. Both the motions came on in July last, before the Vice Chancellor, who ordered the information to be taken off

the file, and refused the motion for the order to amend, giving the costs of both motions against the relators.

Sir *William Horne* and Mr. *Blunt* now moved for the discharge of his Honor's order, and for an order to restore the amended information; alleging, that the only reasons which his Honor gave for his order, were—first, that the amended information was not signed by the Attorney General; and, secondly, that the notice of motion to amend was given in the name of the relators. It was sufficient that the Attorney General had once put his signature to the information; his sanction had been obtained for the proposed amendment; his signature to every amendment was not necessary. The second objection was overruled by the defendant's own proceedings; for while they objected to the notice of motion as being in the name of the relators, they gave the notice of their motion for taking the information off the file to the relators' clerk in Court, and not to the Attorney General. It was well known that it was not the Attorney General, but the relators, who had the conduct of informations. They were answerable for the costs. The Attorney General's sanction was required to the filing the information, and the proceedings were in his name, and under his control; but the relators were the acting parties. It was not usual to take an information off the file for a slip in a mere point of practice, and this Court would hesitate before it ordered to be struck off the file, for every cause, an information for the better regulation of a charity. They cited for the points in their argument, *Mitford's Pleadings*,^a *Lloyd v. Mackean*,^b and *The Attorney General v. Vivian*,^c and asked for the discharge of the Vice Chancellor's order with costs.

Mr. *Wigram*, Mr. *Wakefield*, and Mr. *J. Russell*, for different defendants, opposed the motion. The eight relators authorised the information, which was deliberately filed in their names. They could not assign any reason to the Vice Chancellor, nor do they give any reason to the Court for their change of mind. One relator was not sufficient for the costs. The order for the amendment at the Rolls was irregular. This Court would not allow a solemn record to be altered without sufficient cause discovered after the information was filed.

Mr. *Blunt*.—The discovery that the relators were members of the corporation was sufficient cause.

Mr. *Wakefield*.—That was not a new discovery, for the information described the relators as members of the town council; and one of the solicitors for the information did not, in his affidavit in support of this motion, venture to swear that that was a new discovery; but he put into his affidavit his letter which he wrote to the solicitor for the defendants, stat-

ing that he had, after filing the information, discovered that the seven relators were members of the corporation. The Court would observe that that fact was not sworn to. The case of *Lloyd v. Mackean* is not authority. There two relators' names were struck out of the information. The principle of that decision is one point under appeal in the House of Lords, in the case of *Attwood v. Small*. It was no reason that, because the parties in this case were members of the corporation, they might not be relators in an information against the corporation. It appeared by the Register's book (1757, fol. 73), that in *Attorney General v. Tancred*,^d five of the relators were defendants to that suit.

The Lord Chancellor.—There the defendants had sufficient security for costs.

His Lordship, giving his judgment, said he could not undersstand on what recognized principle of practice the Vice Chancellor ordered the original information to be taken off the file. If the relators had irregularly obtained an order to amend the information, the obvious course would be to order the information so amended to be taken off the file, and to leave the record in its original form. He would, therefore, reverse the Vice Chancellor's order, so far as it dismissed the original information, and to that extent would he grant the motion of the relators. But as to that part of their motion, asking an order to amend the information, as they gave no reason for their abandonment of the position in which they voluntarily placed themselves, the Court was not warranted in so altering the record. Besides, there was nothing in their character of town councillors to prevent their being relators in an information against the other members of the corporation for the better administration of a charity. There was no repugnancy in those characters. The appeal motion against that part of the Vice Chancellor's order, his Lordship was obliged to refuse, with costs.

Attorney General v. Cooper, and others.—At Westminster, Nov. 2nd, 1837.

Rolls.

DUTY OF EXECUTORS.

It is the duty of an executor and trustee to invest for interest, small as well as large sums, for the benefit of the parties interested under the will; but where a will imposes a duty, and gives a discretion to a trustee of attending to the infirmities of one of the objects of the trust, he may hold in his hands funds for that purpose.

This was a suit for the administration of a testator's estate. The Master, under an order of reference, reported, among other things, that a sum of 175*l.* of the estate remained in the hands of the executor, the plaintiff. A petition was now presented by one of the parties beneficially interested, praying that the

^a Pp. 23, 99, 100.

^b 6 Ves. 145.

^c 1 Russ. 226.

^d 1 Eden, 10.

Master's report be confirmed, that the executor be ordered to invest that sum, and that the Master might reconsider his report, and state how much interest would have accrued thereon if it had been duly invested; and also what would be the petitioner's proportion thereof.

Mr. *Pemberton* in support of the petition — Although the expense of correcting the executor's accounts, and vesting the money, may be greater than the profit to be derived from that proceeding, still that was no reason why the petitioner should not have all the benefit to which she was entitled. The facts were these:—The late Mr. Joseph Cantwell, by his will, dated April, 1823, appointed the plaintiff and Mr. Knott his executors, and bequeathed to them 1,000*l.*, and one-seventh part of the proceeds of his personal and real estates, upon trust to pay the interest to his daughter, Francis Ann Heard, during her life, and with directions to invest what he should not so apply in the purchase of stock; and after her decease he bequeathed the same, with the accumulations, to be divided among her children equally. The testator died in 1829. Mr. Knott renounced probate, but the plaintiff proved and acted, and became sole trustee and executor. Mrs. Frances Ann Heard died in 1835, leaving four children, of whom the petitioner was the youngest. The plaintiff came to a settlement with the three elder children, who had attained twenty-one, and paid them what appeared due to them on account; but the petitioner, on coming of age, objected to that account, as it appeared that money had been received by the plaintiff, and retained in his hands, which he ought to have laid out, and her petition was, that the plaintiff should be made accountable to her for her share of what he might have received for interest. The learned counsel then referred to the account as reported by the Master, and insisted, among other items, that a sum of 175*l.* ought to have been invested, and that the petitioner was entitled to her share of the interest that might have been produced by the proper investment of that and other sums.

Mr. *Kindersley* and Mr. *Campbell*, for the plaintiff, insisted that the plaintiff was not bound to invest any of the sums, as he was at all times under the necessity of providing for Mrs. Francis Heard, who was subject to some infirm habits, and for acting for whose benefit a general direction and discretion were given to him by the will. Very shortly after the time when the 175*l.* was found due, the plaintiff had paid large sums on account of Mrs. Heard. The other three children had not objected to the accounts, and the amount of the present petitioner's share in the interest, had the money been invested, was so trifling, that they trusted the application would be dismissed with costs.

Lord *Langdale*, M.R. said, it was not the smallness of the amount that would prevent him giving the petitioner the relief she sought, for small sums were sometimes of as much sequence to some parties as large sums

were to others. But he thought that, under the trusts of Mr. Joseph Cantwell's will, the plaintiff was not bound to invest the sums in the manner the petitioner required, especially as there was a discretion given to him to take care of Mrs. Heard; and he might, after the investment, have been called upon for money, which he could only raise by selling out what he had invested. Looking at the whole of the circumstances, his Lordship did not think that the prayer of the petitioner should be granted.

Cantwell v. Higgins. — At Westminster, Nov. 3, 1837.

King's Bench.

[Before the Four Judges.]

APPEAL AGAINST REMOVAL.

A notice of appeal against an order of removal, must strictly state the grounds of appeal, or the justices at sessions may refuse to hear the appeal.

Mr. *Archbold* applied for a rule to show cause why a *mandamus* should not issue to the Justices of Salop, commanding them to enter continuances, and hear an appeal. The appeal was against an order for the removal of a woman and her four children; and the question raised in the notice of appeal, was a question upon the settlement of the husband. In the notice of appeal the settlement was stated to have been acquired by a hiring in the year 1813. The case was partly heard before the sessions, but was stopped by the magistrates, when it appeared in evidence that the hiring on which the appellant parish proceeded, was a hiring in the year 1810. The sessions thought upon this evidence being given, that the notice of appeal was insufficient; and that they had therefore no jurisdiction to proceed further with the hearing, and the appeal was dismissed. It was clear that the sessions were wrong in thus stopping the case. The notice of appeal was sufficient. These notices were now regulated by the 5 & 6 W. 4, c. 76, s. 81, by which it was enacted that "the overseers of a parish appealing against any order of removal, shall send or deliver to the overseers of the respondent parish, a statement in writing under their hands of the grounds of such appeal." It is not necessary that the settlement proved should be precisely the same as that stated in the notice; it is enough if it was substantially the same. The case of the *King v. The Justices of Cornwall*,^a decided that in such a case it was sufficient that the ground stated in the notice called the attention of the adverse party to the fact of the pauper being settled in a particular parish, so as to enable the respondent to enquire into that settlement. The statement of a demand in a bill of particulars need not be made out to the very letter; it is enough if it is in substance correct. The same rule is applicable to a notice of appeal.

Lord Denman, C. J.—The sessions have sufficiently heard and decided this appeal; and I think that they have decided it rightly. In the case of the *King v. Cornwall*, I thought that the notice of appeal was sufficient; but this Court in a subsequent case, which occurred when I was not present,^b doubted the correctness of that holding, and held the parties bound to greater strictness. I am of opinion that what has been since done, is more satisfactory than the previous decision, and that it is material that there should be a distinct, clear, and precise notice of the grounds of appeal, that the parties called on to answer the appeal may really know what it is that they have to meet. I do not think that in this case they had such a notice.

Mr. Justice Patteson.—We have thought it better that we should hold parties to very great strictness in all these notices, as to all that is material to be known with regard to the grounds of the intended appeal. The statement of the time of hiring is very material, and the party who was ready to disprove a hiring in 1813, might at once have given up the contest, had he known that a hiring in 1810 was the hiring really intended to be relied upon as the ground of the settlement. With respect to the case of the *King v. Cornwall*, that was under very peculiar circumstances. The notice there related to the settlement of the children of a female pauper by her former husband. That notice, though defective in form, really communicated all that was intended to be disputed; and the question there was really a question of law, on which the parties could not be taken by surprise, as upon a question of contested facts.

Mr. Justice Williams.—I am entirely of the same opinion. It appears to me that we ought not, in a case where the magistrates are the Judges, to disturb their decision, unless we see that they are clearly in the wrong. They are not so here. The object of the statute was to tie the parties down to the precise settlement on which they meant to rely; and the best way for us to effectuate the object of the statute, is to hold strictly to the rule that the notices shall be precisely correct. It seems to me that here the notice described a settlement perfectly different from that which was intended to be presented in support of the appeal, and that the notice was therefore bad.

Mr. Justice Coleridge.—This question was in fact decided in the case of the *King v. Holbeach*,^c in this Court, last year, where the question was as to the words Spalding feast, or Holbeach fair; and the Court held that a description in a notice of a hiring at one of these times, could not be supported by proof that the hiring was made at the other; and that the notice which substituted one for the other was therefore bad. The respondents here probably knew that there was no hiring in 1813, and therefore went to disprove a

case founded on such a hiring; but the hiring ultimately proved to be a hiring in 1810. Perhaps if the hiring had been correctly stated in the first instance, he might not have attempted to dispute it. The respondents had not been prepared for a case of that sort, and were therefore taken by surprise, which was the very thing that it was the intention of the statute to prevent. The two hirings were perfectly different.

Rule refused.—*The Queen v. The Justices of Salop*, M. T. 1837. K. B. F. J.

VERDICT.—SETTING ASIDE.

The Court will not set aside a verdict as for excessive damages, because the plaintiff is in a very humble situation in life, and the premises which he occupies, and in which he complains that a trespass has been committed, are held by him at a very low rent.

Mr. Peacock moved for a rule to shew cause why the verdict given for the plaintiff in this case should not be set aside for excessive damages. The affidavits on which the motion was founded stated that this was an action of trespass, for taking away the doors and windows of a house occupied by the plaintiff, and of which the defendant wished to obtain possession, but the plaintiff refused to quit it. The defendant committed the trespasses in question, and the plaintiff then commenced proceedings against him. The defendant offered the plaintiff 20*l.* to compromise the matter, and the plaintiff said he was willing to take it, but that his attorney told him he must not, and that a jury would give him 50*l.* The cause was tried before the undersheriff of Southampton, when the jury returned a verdict for the plaintiff, damages 100*l.* The cottage in question was not worth more than 4*l.* a-year: the plaintiff was a very poor man, and under all the circumstances of the case, the Court could not but look upon such damages as excessive. In *Price v. Severn* (*a*), where a jury, in an action of trespass, gave 20*l.* to a man who had already accepted 2*l.* and some victuals from the defendant as in consideration of the trespass, the Court set aside the verdict for excessive damages. The principle of that case ought to govern the present.

Lord Denman, C. J.—We do not think that the situation in life of any person is the only test by which damages are to be estimated. This plaintiff and his family might have suffered very severely from this trespass. The jury were the proper judges of the damages, from what they heard of the circumstances of the case; and we do not see enough to call on us to disturb their verdict. In the case cited the plaintiff had actually accepted satisfaction before action brought.

Rule refused.—*Day v. Holloway*, M. T. 1837. K. B. F. J.

^b *The King v. The Justices of Derbyshire*, 1 Nev. & Perry, 703.

^c 1 Nev. & Per 137.

EJECTMENT.—MISTAKE.

Though a declaration was entitled of a term which had not yet arrived, the Court allowed the plaintiff to have judgment against the casual ejector, the other proceedings in the cause appearing to be correct.

Mr. Richards moved for judgment against the casual ejector. The affidavits stated a personal service upon the tenant on the premises, on October 31, and the notice was for the tenant to appear "in next Michaelmas Term." The declaration was entitled, "Trinity Term, in the first year of the reign of Queen Victoria." The notice at the foot of the declaration had no date to it. Now, in fact her Majesty did not begin her reign till the 20th of June, which was some days after the end of Trinity Term, and consequently Trinity Term in the 1st year of the reign of Queen Victoria had not yet arrived. Still it was clear that the notice and service were sufficient. In an *Anonymous case*,^a Mr. Murray moved for judgment against the casual ejector on an affidavit of the same sort as in the present case, the declaration there being dated as of Trinity Term in the 56 G. 3, when in fact the Trinity Term of that year of his Majesty's reign had not then arrived; but there, as here, the notice was served in sufficient time, and the Court allowed the motion. A similar motion was allowed in *Doe v. Roe*.^b

Per Cur.—Under these circumstances you may take your rule.

Rule granted.—*Doe v. Roe*, M. T. 1837. K. B. F. J.

King's Bench Practice Court.

SERVICE OF RULE ON ATTORNEY'S AGENT.

Under special circumstances, the Court will permit a rule nisi, calling on an attorney to pay the costs of taxing his bill, the Master having taken off more than one sixth, to be served on his agent.

J. Jervis moved that service of a rule nisi on an agent of an attorney might be deemed good service. The rule called on the attorney to shew cause why he should not pay the costs of taxing his bill, the Master having taken off more than one sixth, and every means had been taken to serve it on the attorney, but without success. It was found that he did not live at the town residence described in the Master's list.

Littledale, J., thought that the rule might be served in the manner requested.

Rule accordingly. *Burrell v. Seaton*, T. T., 1837. K. B. P. C.

ADMISSION OF ATTORNEYS.—NOTICE.

In reckoning the three days before the commencement of the Term in which the notices of persons applying to be admitted as

attorneys are to be delivered, pursuant to the rule 5 R. G. H. T. 6 W. 4, Sunday will reckon one day.

R. V. Richards applied on the first day of Term, that the notices of application of several persons to be admitted attorneys, might be considered to have been served in due time at the Master's office. Some doubt had arisen on the construction of the rule 5 H. T. 6 W. 4. That rule required that three days at least before the commencement of the Term next preceding that in which any person should propose to be admitted as an attorney of either of the Courts, he should cause to be delivered at the Master's or prothonotaries' office, as the case might be, instead of affixing the same on the walls of the Court, as before required, the usual written notices. The question was, whether the three days must be calculated as three clear days, and if so, whether Sunday would reckon as one of them. The notices here had been served on Thursday, and the Term commenced on Monday.

Coleridge, J., was of opinion that Sunday would reckon as one day.

Order granted.—*Ex parte* ———, T. T. 1837. K. B. P. C.

ATTORNEY.—ANSWERING MATTERS.

An attorney must be called in Court in order to make a rule absolute requiring him to answer certain matters contained in an affidavit.

Gaselee moved to make a rule absolute on an affidavit of service. The rule called on an attorney to answer certain matters contained in an affidavit.

Coleridge, J., said, that the attorney must be called in Court.

The attorney was called accordingly, but did not answer, and the rule was made absolute.

Rule absolute.—*In the matter of Whickes*, T. T. 1837. K. B. P. C.

ATTORNEY.—TIME TO PLEAD.

In a country cause, where the defendant is an attorney and lives in London, he has only four days' time to plead.

R. V. Richards shewed cause against a rule obtained by Davison for setting aside a judgment signed for want of a plea, with costs, for irregularity. It appeared that the declaration, the venue of which was laid in Surrey, was indorsed to plead in four days, and judgment was signed on the fifth day. An affidavit was now produced, in which it was sworn that the defendant was an attorney practising and residing in London; and it was urged that an attorney was an exception to the general rule, and had no more time to plead in a country cause than in a town cause. The case of *Mann v. Fletcher*, 5 T. R. 369, and Archbold's Practice by Chitty, 3d ed. p. 194, were referred to.

Davison, in support of the rule, urged that,

^a 2 Chitt. Rep. 172.

^b 2 Dowl. Prac. Cas. 186.

although the authorities cited might be quite right, they were inapplicable since the Uniformity of Process Act. The reason given for the decision cited was, that the attorney was supposed always to be in Court; that fiction might have been of some practical purpose formerly, when the attorney was sued by bill, but now that there was process to bring him into Court, the case was different. The fiction, therefore, having been removed, the consequence of it must also be discontinued.

Coleridge, J., said, that in a case where a defendant attorney lived in London, he had only four days for pleading, even in a country cause. The Uniformity of Process Act did not affect the practice at all, and the rule having been moved with costs, must be discharged with costs.

Rule discharged accordingly.—*Lowder v. Lander*, T. T. 1837. K. B. P. C.

EJECTMENT.—EXECUTION OF LEASE.

In moving for the landlord's rule under the 1 G. 4, c. 87, the execution of the lease need not necessarily be sworn to by the attesting witness, if it is deposed to by another person.

Brett moved for the usual landlord's rule under 1 G. 4, c. 87, s. 1. The affidavits on which the application was founded were in the form, and contained the ordinary particulars, except that the attesting witness to the execution of the lease had not made an affidavit. Another person had, however, sworn to the execution of the lease, and by his affidavit the application was supported.

Littledale, J. (after consulting Mr. Hill, the clerk of the Rules).—That is immaterial. It is not indispensable, in order to obtain this rule, that the affidavit of execution should be made by the attesting witness.*

Rule granted.—*Doe d. Gowlan v. Roe*. K. B. P. C.

COSTS.—ENDORSEMENT OF WRIT.

A writ being duly endorsed pursuant to the 2 R. G. H. T. 2 W. 4, for a certain sum for debt and costs, and the amount being paid within the four days prescribed by the rule, with 5s. more, and on the costs being taxed, more than one sixth, including the 5s. being taken off, the case is not within the rule, and the defendant, therefore, is not entitled to the costs of taxation under it.

G. T. White moved for a rule to show cause why the plaintiff's attorney should not pay the costs of taxation. It appeared that a writ had issued, indorsed according to 2 Reg. Gen. H. T. 2 W. 4, and 5 R. G. M. T. 3 W. 4, claiming 5l. 7s. 8d. debt, and 2l. 2s. costs. Within the four days prescribed by the rule the defendant's attorney paid both sums to the

plaintiff's attorney, together with five shillings, which the latter demanded, and a receipt for both sums was given. Subsequently an order for taxation of costs was obtained, and the sum of 10s. was taken off by the Master. It was contended, therefore, that as more than a sixth had been taken off, the plaintiff's attorney must pay the costs of taxation. The 5s. must be considered as part of the bill, but if it were not so, more than one sixth had not been taken off.

Coleridge, J. said, that the payment of the 5s. was unnecessary, for if the plaintiff had proceeded after the payment of the debt and costs claimed by the endorsement, it would have been at his peril. The meaning of the clause in the rule, that when payment was made within four days from the service, the defendant was entitled to the costs of taxation, was only that the defendant might have the costs taxed notwithstanding the payment, and that of course meant the costs indorsed on the writ. This, therefore, was not a case within the rule, and it was the defendant's fault in paying the money, as he was not obliged to do so.

G. T. White urged that the case was within the spirit, although not within the letter, of the rule.

Coleridge, J. said, that he knew no power by which the Court could extend this rule. He did not mean to say that the defendant had not some other remedy.

Rule refused.—*Ward v. Gregg*, T. T. 1837. K. B. P. C.

Common Pleas.

ENTERING UP JUDGMENT ON AN OLD WARRANT OF ATTORNEY.—EXECUTION OF WARRANT OF ATTORNEY.

An affidavit in support of an application for leave to enter up judgment on an old warrant of attorney, executed by a marksman, alleging the warrant to have been "duly executed" by the defendant, but not stating that it was read over to him, is insufficient.

Hodges moved for leave to enter up judgment on an old warrant of attorney. The affidavit was regular as to the facts which were material as immediately regarded the present application, and it stated that the warrant of attorney was "duly executed" by the defendant, who was a marksman, and that it was signed, sealed, and delivered by him. It omitted, however, to state that it was read over to him, but it was submitted, that as it was alleged to have been "duly executed," this fact must be taken for granted.

Tindal, C. J.—You had better set the affidavit right, which you can do in a few days, by sending it back to the person by whom it is sworn.

Rule refused.—*James v. Harris*, M. T. 1837. C. P.

* The words of the section are, "proving the execution of the same by affidavit."

JUDGMENT AGAINST CASUAL EJECTOR.—SERVICE OF DECLARATION ON WIFE OF TENANT.

The Court will not grant judgment against the casual ejector upon an affidavit alleging the declaration to have been served on the wife of the tenant, but which does not state that it was on the premises, or that she was living with her husband.

Bayley moved for judgment against the casual ejector. The premises were in the possession of four tenants, and personal service had been effected upon three of them. A doubt arose, however, whether the service on the fourth was good service. The affidavit stated the declaration to have been left with the wife of the tenant, but it did not allege that it was on the premises, or that the wife was living with her husband. He submitted that a rule to shew cause might be granted.

Tindal, C. J.—I think that you cannot have a rule against the fourth tenant. The only ground on which service on the wife would be deemed sufficient, is, that she is in communication with her husband, but that state of facts does not appear to exist here. You may take your rule as to the other tenants.

Rule accordingly.—*Doe d. Mingay v. Roe*, M. T. 1837. C. P.

JUDGMENT AGAINST CASUAL EJECTOR.

The declaration in ejectment being entitled of T. T. 1 Victoria, her Majesty not having begun to reign until after the end of that Term, but the notice being rightly dated, the Court will nevertheless grant a rule for judgment against the casual ejector.

Henderson moved for judgment against the casual ejector.

The declaration was entitled of Trinity Term, 1 Victoria, her Majesty's reign not having commenced in that Term. The notice at the bottom of the declaration were rightly dated.

Tindal, C. J.—That will do.

Rule granted.—*Doe d. — v. Roe*, M. T. 1837. C. P.

TESTE OF HABEAS CORPUS.—COMMENCEMENT OF HABEAS.

A writ of habeas corpus sued out by a prisoner in custody, being tested as of the last day of T. T., but being commenced in the reign of Victoria instead of William, the Court will allow it to be amended.

Talfourd, Serjeant, moved for leave to amend a writ of habeas corpus sued out at the instance of a prisoner in the custody of the sheriff of Warwick. The defect in the writ was, that being tested as of the last day of last Term, it had at the commencement of it "Victoria" instead of "William." He referred

to the case of *Waking v. Watson*,^a where a writ of *subpoena ad respondendum*, being tested in the name of the wrong Chief Baron of the Exchequer, the Court granted a rule for its amendment. And he also alluded to the case of *Morris v. Herbert*.^b

Tindal, C. J.—This was a writ which the prisoner sued out himself.

Talfourd, Serjeant, intimated that it was, and that he applied on his behalf.

Tindal, C. J.—There is no objection to the amendment being made; we take judicial notice of the fact of her present Majesty not having acceded to the throne at that time.

Rule accordingly.—*Anonymous*, M. T. 1837. C. P.

EXCHEQUER.

ATTORNEY'S LETTER.—COSTS.

An attorney will be allowed the costs of one letter only, written before the commencement of a suit requiring the settlement of a demand.

Darison moved for a rule for the review of the Master's taxation. It appeared, that before the writ was sued out in the action, fifteen letters had been written by the plaintiff's attorney to the defendant, requiring a settlement of the demand, and he had received and paid the postage of fourteen letters, in answer. When the action had proceeded as far as the declaration, an order was made by consent for the stay of proceedings on payment of debt and costs; but on the Master's taxing the costs, he had only allowed for one letter. The defendant had requested time, and every accommodation had been granted to him by the plaintiff's attorney, and it was submitted, that the Master should in this respect review his taxation.

Lord Abinger, C. B., said, that the usual practice was to allow for one letter only, and it was better to abide by the general rule, otherwise two letters a-day might be sent by the two-penny post.

Rule refused.—*Capel v. Staines*, T. T. 1837. Excheq.

ADMISSION OF ATTORNEYS.

Gentlemen applying to be admitted in the Queen's Bench are requested to leave the Judge's fiat, together with their affidavits, at the Master's Office, Paper Buildings, Temple, before five o'clock in the afternoon of the day preceding that on which they intend taking the oaths in Court.

N. ALDRIDGE,
Master's Clerk.

Master's Office, Temple,
2d Nov. 1837.

^a 1 Cr. & J. 467.

^b 1 Price, 245.

NOTES OF THE TERM.

NEW FEES OF THE COMMON LAW OFFICES.

We have seen a copy of the proposed table of Common Law Fees, under the 1 Vict. c. 36, and find that an *ad valorem* scale is intended to be established throughout the proceedings, commencing first, with actions under 10*l.*; secondly, on actions above 10*l.* and under 20*l.*; and thirdly, in actions above 20*l.* The fee to be paid on issuing a writ of the smallest class is proposed to be 3*s.*; of the next class 4*s.*; and of the third 5*s.*

Looking at the Common Law Commissioners' First Report, we observe that the number of writs issued from the three Superior Courts for several years varied from 80,000 to 100,000 annually. The sum, therefore, to be raised by the proposed fee on the first step in the action would be about 20,000*l.* a-year—an increase on the present amount of several thousand pounds.

On the other hand it appears that several small fees on subsequent proceedings are to be abolished. This course will no doubt save much trouble to the officers and practitioners; but in effecting this object the suitor ought not to be overlooked. It should be remembered that many actions are brought which proceed no further than the first stage, either from an unexpected defence which may occasion more risk than the plaintiff chooses to run, or because the defendant becomes insolvent. Now, the expense of the establishment of clerks for issuing writs must comparatively be of small amount. A clerk in each Court will have merely to receive and file a precipe, and mark the writ with the official stamp. The 20,000*l.* a-year will, therefore, chiefly go to defray the expense of the officers and clerks employed in the subsequent stages of an action.

We beg to ask why the expense of each department of business should not be estimated, and the fees adapted accordingly? If this were done, the larger part would fall on the proceedings connected with special matters brought before the Court: on arguments, trials, and on judgments, and taxations. The principal expense of the new establishment will consist, of course, in the salaries of the fifteen Masters, which at 1,200*l.* a-year each (exclusive of compensation to some of them), will amount to 18,000*l.* It is obvious that the duties performed by these officers will chiefly consist in attending the Court and taxing costs. We submit, therefore,

that adequate fees should be required on all matters transacted by the Masters personally, particularly on taxations, which will occupy three-fourths of their time; and that the fees on mere formal proceedings, which come before the clerks only, should be of small amount, proportioned to the duty performed.

THE APPROACHING EXAMINATION.

We understand that of the 127 candidates who gave notice of their examination for this Term, several have not left their testimonials of service in due time, and we advert to this circumstance on account of a mistake under which several persons appear to labour.

The Rule requires that the articles of clerkship, with answers to the questions relating to due service, should be left at the Law Society within the first seven days of Term. The examination takes place within the last ten days, and the interval enables the Examiners to determine whether the applicants have complied with the Statute and Rules, so as to entitle them to be admitted if found competent in legal knowledge. Without this preliminary qualification no examination can take place.

Now, it has happened in many instances, (one of which was reported in our last Number, p. 13, *ante*.) that the articles do not expire till after the day of examination; but if they expire in the course of the Term, the examination is taken conditionally, in order that the applicants may not be delayed till another Term. Still they are required to leave their testimonials of qualification, *minus* only the short time remaining in the Term; otherwise the Examiners can have no assurance that their labours will be of any avail. If no documents be deposited, proving the service so far as it has extended, it may turn out that the five years' service cannot be completed in the same Term, and consequently no certificate can be granted, and a new examination must be taken in a subsequent Term. For the sake, therefore, of the candidate, as well as the Examiners, there should be no doubt of the service being completed within the Term, and this can only be ascertained by inspecting the proper documents, which therefore should be left according to the rule. The Examiners appear to have no discretionary power to take the papers after the seven days have expired.

MISCELLANEA.

LAW STUDENTS.

"We can say from the observation of many years, that Adam Smith's statement, 'if you send your son to study the law, it is, at least, twenty to one if he ever makes such proficiency as will enable him to live by the business,' has no resemblance to the existing state of things. We have watched the progress of perhaps, a hundred legal students, and, where fair diligence has been employed, success has been the rule, and failure the exception. Many, indeed, have not applied fair diligence; but we have seen much more success among the idle than failure among the laborious. So far from the chances being twenty to one against a young lawyer, we should be inclined to rate them at two to one in his favour." *From the article on Political Economy, in the Encyclopædia Metropolitana, by Nassau Senior, Esq.*

SOCIETY OF LEGAL MEN.

"The accomplished author of Human Life, makes one of his favourite characters complain that he is never in a lawyer's company without fancying himself in a witness box: and it must be owned that the habits of the bar are apt to militate against the loose, careless, easy style of thought and expression, the *grata protervius*, which is most popular in the drawing room. Yet the late Lord Grenville once remarked, that he was always glad to meet a lawyer at a dinner party, because he then felt sure that some good topic or other would be rationally discussed."—*Quarterly Review*.

Eyrequeer Equity Sittings.

Michaelmas Term, 1837.

Friday ..	Nov. 10	Petitions and Motions.
Saturday ..	11	{ Pleas, Demurrers, Ex-
		ceptions, &c.
Tuesday ..	14	Petitions and Motions.
Saturday ..	18	Paper.
Tuesday ..	21	Petitions and Motions.
Wednesday ..	22	Paper.
Thursday ..	23	Causes.

THE EDITOR'S LETTER BOX.

The Quarterly Digest of all reported cases, will be published on the 18th instant. This will complete the volume for the year 1837.

The two statutes contained in the present number, finish the selection relating to the Law, and leave us at liberty to consider the New Measures which may be expected to arise in the approaching Session of Parliament.

The Fourteen Volumes of the Legal Observer and the Two Volumes of the Monthly Record already published, form a complete History of the Law for the last seven years. They contain among many other things.—1. All the important Acts of Parliament. 2. All the New Bills which have not passed into Law. 3. The fullest information on the leading subjects relating to Law Reform; as Local Courts, General Registry, Imprisonment for Debt, Chancery and Bankruptcy Reform, &c. &c. 4. Reviews of all Publications connected with or bearing on the Law. 5. Reports of Committees and Commissioners, Parliamentary Returns. 6. Legal Biography, including Memoirs of all eminent Lawyers who have died or retired in the last seven years, with many others. 7. All the late Rules and Orders of Court. 8. Dissertations and Cases connected with Conveyancing and Property Law. 9. The Law of Attorneys. 10. Practical Points of General Interest. 11. Remarkable Trials, ancient and modern. 12. The Laws of other Countries. 13. Early Reports of Decisions, by Barristers of the several Courts, together with a variety of other matter, of daily use to the Practitioner. The General Index to the first Ten Volumes, and the subsequent Indexes render all this information easily accessible.

We have now reprinted several numbers, and complete Sets of the Legal Observer may be obtained of the Publisher. Subscribers desiring to have any separate numbers to complete their Volumes will be supplied with them on the usual terms for a short time to come. The first Ten Volumes with a General Index may be had for 5*l*.

The Subscribers to the *Legal Almanac* of last year, who wish to continue the work, are recommended to give their orders soon, as the applications for it have considerably increased, and the number printed is limited.

The Legal Observer,

SATURDAY, NOVEMBER 18, 1837.

— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HOMAT.

THE OPENING OF THE SESSION, AND THE PRIVATE BUSINESS OF PARLIAMENT.

THE House of Commons assembled on Wednesday last, for the purpose of choosing a Speaker, and next week the tug of war will commence in good earnest. The advice given on a former occasion^a to the country, by James the First, not to choose “curious and wrangling lawyers, who may seek reputation by stirring needless questions,” has at any rate not been followed in the election of the present Parliament, supposing the lawyers elected to come under the description of being “curious” or “wrangling.” That there is the usual compliment of legal members, our lists already published fully show; and both the great parties in the state, have obtained several accessions.

It may not be inappropriate to contrast the present state of the House of Commons, with its state at the end of the seventeenth century.

“In those days,” says Mr. Johnson,^b “as the power of the parliament was limited, so the duration of its sittings was short. A session seldom lasted longer than a month. The Houses met early in the morning, and their debates rarely lasted till noon. Short, however, as these sessions proved, the crown seldom troubled them with even these formal meetings. Thus, the first parliament in which Coke appeared, was speedily prorogued, and it did not meet again for four years. When it did assemble, on the 24th of October, 1597, its duration was equally short; and another long period of five years elapsed before it met

at Westminster, on the 27th of October, 1601. This was the last parliament of Queen Elizabeth. The pay of a knight of the shire, as then allowed by the statute of the 16th of Edward the Second, was four shillings per day; a burgess was to be content with half that sum. This, however, did not preclude the members from entering into private bargains with their electors. As an instance, John Strange, the member for Dunwich in 1463, agreed with the burgesses of that town to take his wages in *red herrings*. In the same reign, the citizens of York, being anxious that the dignity of that ancient corporation should be properly represented in parliament, unanimously agreed that their members should be allowed four shillings a day, if they kept a house in London during the session, but only two shillings if they went “to borde.” They were not, however, underpaid, if we may judge of their integrity and independence by their actions. They probably much resembled the petty juries of modern quarter sessions: they were drawn from home with equal reluctance, and were, in the majority of instances, far less independent, and not nearly so well informed as to the best interests of their country. They were willing to redress grievances, and to assert their own privileges; but they proceeded with much cautious timidity, and shrank back into inactivity upon the first rebuke of the chief magistrate. The persons who were sent to parliament from the cinque ports, received for many years a daily stipend of two shillings; but after 1576, it was raised to four shillings, and the inhabitants were then wont to evade the burden, by neglecting to make a return to the writ. As early, however, as the reign of Henry the 6th, the burgesses of Dover made a bargain with the mayor and jurats of Faversham, that, for the sum of forty shillings

^a Nov. 1623, by proclamation.

^b Life of Coke, vol. 1, p. 78.

per annum, that they should once in three or four years, name a member to represent Dovor in parliament. In 1468, the now opulent shires of Essex and Hertford were so bare of substantial inhabitants, that the sheriff could only find Colchester and Maldon in Essex, and not one town in Hertfordshire which could send burgesses. Hence, and from other instances, it appears that it lay in the choice of the sheriff, whether a town should send any representative or not; and there is no instance of complaint, either of the House of Commons, or of the towns, against the sheriff, for any partiality on this score. Several little boroughs pleaded their poverty as an excuse for not making a return to the writ at all. Much rejoicing took place when they were excused from the burthen; many boroughs managed, by some address, to be excused for ever. Of this class were Kingston in Surrey, and Thaxted in Essex. The attendance of the members was always very unwilling, and the ministers of the crown never thought of *threatening them with a dissolution*, when they were idle and inattentive; for that, in those primitive days, was not considered a punishment. A member at that period, had to report to his constituents, upon his return home, what he had said, and how he had voted in parliament, for there were then no paid reporters of speeches. The mayor and corporation usually provided each of the representatives with a horse to ride to the parliament; and as it was a usual thing for them to be summoned to meet at some town far away from London; as Oxford, Winchester, or even Carlisle, such was the unwillingness of the elder burgesses to fill the office of member of parliament, that the choice fell of necessity upon the best horsemen, and those most able to bear fatigue; just as in modern days, the choice of parish constables is decided. About the year 1640, in a private manuscript, J. Harrington, Esq., of Kelston, Somersetshire, thus described his *cunvass*, in the December of that year.

"A note of my Bathe business aboute the Parliament.

"Saturday, December 26.—Went to Bathe, and dined with the maior and citizens; conferred aboute my election to serve in parliament, as my father was helpless, and ill able to go any more. Went to the George Inn at night; met the bailiffs, and desired to be dismissed from serving; drank strong beer and metheglin (mead); expended about three shillings, went home

late; but could not get excused, as they entertained a good opinion of my father.

"Monday, Dec. 28.—Went to Bathe; met Sir John Horner; we were chosen by the citizens to serve for the city; the maior and citizens conferred about parliamentary business. The maior promised Sir John Horner and myself a horse a-piece, when we went to London to the parliament, which we accepted off; and we talked about the synod and ecclesiastical dismissions. I am to go again on Thursday and meet the citizens about all such matters, and take advice thereon."

"Thursday, 31.—Went to Bathe; Mr. Ashe preached; dined at the George Inn with the maior and four citizens; spent at dinner six shillings in wine. Laid out in victuals at the George Inn, xis. 4d.; laid out in drinking, viis.; laid out in tobacco and drinking vessels, iis. 4d.

"January 1.—My father gave me 4l. to bear my expenses to Bathe. Mr. Chapman, the maior, came to Kelston, and returned thanks for my being chosen to serve in parliament, to my father, in the name of all the citizens. My father gave me good advice touching my speaking in parliament, as the city should direct. Came home late at night from Bathe; much troubled hereat concerning my proceeding, truly for men's good report, and mine own safety."

"Note.—I gave the city messenger iis. for bearing the maior's note to me: laid out in all viis. for victuals, drink, and horse-hire, together with divers gifts."

We are afraid that elections are now hardly managed for eight shillings, even backed by the four pounds from the member's father.

Mr. Abercromby has been again placed in the Speaker's chair, and, as lawyers, we are pleased to record, that this honour has been conferred on a member of our profession, and that his experience at the bar and on the bench, formed, at least, some of the inducements for selecting him for his office.

The only other topic that was discussed, was also of considerable interest to our readers—the mode of disposing of the private business of the House. The existing plan has certainly been the subject of deserved complaint, for a considerable period of time. It is notorious that the open committees, as recently formed, have been partial and ill-adapted for disposing of the business before them. We conceive that this is admitted on all hands. The House will now apply itself with vigour to

remedy the evil; and as we learn that it will be one of the first subjects which will engage its attention, we will now shortly state what has been already done.

At the close of the late reign, the House of Lords took the state of parliamentary business, and the mode of proceeding in it, into consideration; and a committee was appointed on the subject. The House of Commons also appointed a committee. Owing to the demise of the Crown, the report of the committee in the Commons was postponed, but the committee of the House of Lords made their report on the private business, and their Lordships have since followed the recommendation of the report, and have entirely altered the whole course of their proceedings in private bills.

"The amount of the private business is enormous;" (we quote from the last number of the *Edinburgh Review*, [Oct. p. 216], "above 800 private bills were passed in the five years ending 1836; the average being 161 yearly. In some years the number has been much greater; but the bills were less important, and in former times much less contested. In the session 1792-3 there were above 200; and in 1826, 282, many of which were severely contested. Within twelve years no less than 278 acts have passed, for making local regulations in only forty-five towns; some have had during that short period, seven or eight acts, some ten or twelve." There is therefore, at any rate, sufficient to legislate for, and by the resolutions of the House of Lords, all open committees on opposed private bills, are abolished. In their room are substituted, select committees of five members, and these are in each case to be chosen by a committee of five whom the House is to name for the purpose of executing this office. *Persons having any kind of interest in the matter, are to be excluded.* The attendance of the selected is to be compulsory. Each committee is to sit from eleven till four daily, and not to adjourn sooner, without immediately reporting to the House, and not to adjourn over any day but Sunday, Christmas and Good Friday, without leave; and no member is to absent himself from any part of the committee's proceedings, without special leave of the House. Such is the plan already adopted by the House of Lords, and we shall be prepared for some similar proposal for the House of Commons. One plan proposed has been, that a joint committee of the two Houses should sit under the direction of a professional adviser. This plan was proposed in

the Bribery Bill of 1834, which passed the Lords, and was postponed by the Commons. The Select Committee will be immediately re-appointed.

NOTES ON EQUITY.

CONSTRUCTION OF TRUSTEE ACT.

In the case of *ex parte Whitten*, 1 Keen, 278, Lord Langdale, M. R. held, that an unknown heir of a mortgagee was within the 8th section of the Trustee Act, 1 W. 4, c. 60, (1 L. O. 49). In the following judgment it will be seen that the present Chancellor, when Master of the Rolls, held that the 8th section of the 1 W. 4, c. 60, relates to trusts only, and not to mortgages; and to positive and naked trustees, and not to constructive trustees, or trustees by operation of law.

"This was a petition by parties claiming to be owners of the equity of redemption of certain premises conveyed to John Dearden, in fee, by way of mortgage. John Dearden died, leaving [his nephew, John Dearden, his heir, executor, and residuary legatee. John Dearden (the nephew) died, having appointed executors; but the mortgaged premises descended to his coheirs, being two sisters, and John Dearden, the son of another sister deceased, who is in America; and the question is, whether John Dearden is a trustee within the meaning of the 11 G. 4, and 1 W. 4, c. 60. If so, it must be under the 8th section, and that section provides only for the absence of persons seized of any land upon any trust, and there is no mention of mortgages; whereas the 6th section, which provides for the event of the infancy of persons seized, includes mortgages as well as trustees. The only question is, whether the heir of a mortgagee in whom a mortgaged estate is vested, the title to the mortgage money being in his personal representative, be a trustee within the meaning of the 8th section. The heir certainly has no beneficial interest, and he is, constructively, a trustee for the personal representative of the mortgagee, or for the person entitled to receive the mortgage money before the money is paid, and for the owner of the equity of redemption after it has been paid. But the question is, does the 8th section apply to such a trustee? The cases in *re Goddard*, 1 Mylne and Keen, 25, and in *re Stanley*, 5 Sim. 320, do not govern this case, because they were both cases of the heir of a mortgagee not being known; and the 8th section provides only for the heir of a trustee not being known. The heir of a mortgagee may be a trustee, but the mortgagee himself was not a trustee. The present is the case of a person who is the heir of a mortgagee (for John Dearden, the nephew, having been seized of the mortgaged land, and being also heir of the mortgagee, must be considered as the mortgagee for this purpose), seized of the land upon trust, being

out of the jurisdiction; and the question is, whether the heir of the mortgagee be a trustee within the meaning of this section. I am of opinion that this section, taken by itself, relates only to positive or naked trustees, because the cases of constructive trustees are provided for by sections 16 and 18, which would have been useless if constructive trusts had been within the 8th section; nor can the provision of the 18th section here remove the difficulty, because that section provides, that where the alleged trustee has or claims a beneficial interest adversely to the party seeking the conveyance, no order can be made under the act, until it shall have been declared in a suit that such a person is a trustee for the person seeking the conveyance; but this cannot be effected in the absence of the heir of the mortgagee. I am therefore of opinion that the order cannot be made." *In re Dearden*, 3 M. & K. 508.

ACT OF PARLIAMENT.

We have recently collected the cases relating to an agreement to withdraw an opposition to a bill in parliament (see 14 L. O. p. 93). We may add, that where *A.* provided a fund for defraying the expenses of obtaining an act of parliament to dissolve the marriage of *B.* and *C.*, who was *A.*'s illegitimate daughter, that the Vice Chancellor held that this was not an illegal transaction. *Moore v. Usher*, 7 Sim. 384.

SERVICE OF PROCESS ABROAD.

In a suit which related to lands in Middlesex, the defendant was resident at Ghent, in Belgium, and had been served with a subpoena to appear to and answer the bill, under the 4 & 5 W. 4, c. 82 (which see, 9 L. O. 116). The defendant not having appeared, an appearance was entered for him under that act. No answer having been put in, the plaintiff proceeded to take the bill, *pro confesso*, in the same manner as he might have done if the defendant had been served with a subpoena within the jurisdiction of the Court. The Registrar declined to draw up the decree, on the ground that personal notice ought to have been given to the defendant of every application for process subsequent to the issuing of the subpoena. It was contended that the plaintiff was at liberty to take the bill *pro confesso*, according to the usual course of the Court. The Vice Chancellor expressed himself of that opinion, and directed the decree to be drawn up. *Godson v. Cook*, 7 Sim. 519. See also 4 L. O. 97.

NOTICES OF NEW BOOKS.

A Treatise on the Criminal Statutes of 7 Will. IV. and 1 Vict. cc. 84-91. With an Appendix, containing the Statutes, with Notes; also Forms and Evidence. By Humphry W. Woolrych, of the Inner Temple, Esq., Barrister at Law. London: A. Maxwell. 1837.

It is, no doubt, a useful thing to the profession that no sooner is a statute or series of statutes issued by the active part of the legislature, than a host of legal writers, more or less learned in the matter, re-print the acts with notes and annotations. If these new laws were made, not to come into effect either from the passing thereof or at some early day, but at a period comparatively distant, we might look with some hope of realization for treatises of adequate learning and completeness. The rapidity of these mutations, however, renders it impracticable to do more than state the general effect of the alteration; and indeed the practitioner must be content with such measure of fitness for the task as belongs to those who hold "the pen of the ready writer," and send forth the result of their labours with a speed suited to the professional call for early information. It can scarcely be expected that those who are deeply engaged in the practice of the law can find leisure to compile new treatises on every occasion. To a future time, when the desire of change has become exhausted, and the force of custom has resumed its influence, we must look for some great text writer to mould the scattered materials into a systematic shape, and enable the practitioner and the student to pass readily through the difficulties of his way. In the mean time we hold ourselves indebted to those who will assist us from time to time by expounding, even though imperfectly, the effect of each statute as it passes.

In this view we turn our attention to the volume before us—Mr. Woolrych's Treatise on the Criminal Statutes which were enacted in the last Session of Parliament. There have indeed already been published divers editions of these important statutes; but we notice the treatise by Mr. Woolrych as more comprehensive than the others which we have seen.

The volume comprises the ten statutes of the last session (all of which have appeared in the Legal Observer), and the treatise is arranged under the general heads of—1.

Robbery. 2. Burglary. 3. Offences against the person. 4. Arson. 5. Piracy. Under each of these divisions of the subject the present state of the law is considered, including the alterations effected, with directions relating to the indictment, verdict, and judgment in each class of offences.

The work also contains forms of indictments, with the evidence applicable to each, and the several acts *verbatim*, with notes. It is impracticable to give any minute statement of the contents of the volume, or any specimen of its style and manner; but we may add the following remarks relating to piracy.

"With respect to the punishment of piracy at common law, Mr. Archbold, in a recent work upon the new criminal statutes,^a expresses an opinion that no penalty has been assigned in respect of it, inasmuch as the third section refers to "any offence which by any of the acts hereinbefore referred to amounts to the crime of piracy," &c.; consequently, if any act of piracy at common law be independent of those statutes, the clause will not apply. It is true that piracy, accompanied by a murderous assault, or by stabbing, cutting, or wounding, is punishable, whether by common law or by statute, under the 2nd section; but the question is, whether when stripped of these aggravating circumstances, a common law piracy, not within the statutes, be punishable or not under the present section. If it be not, it is an offence by the Marine Law, which is still in force, and is, consequently, capital. And as piracy at common law consists in robbery and depredation upon the high seas, it does not seem to be contained in any statute under that simple description, and, accordingly, must be remanded to the common law for an explanation of its punishment. The statute 28 Hen. 8, c. 15, does indeed speak of treasons, felonies, robberies, murders, &c. committed in or upon the sea; but it does not make these acts piracy—it does not even make piracy felony—it merely prescribes the mode of trial, but does not create any new offence.

"It has occurred to the author, that the objection taken may be repelled by referring to the stat. 39 G. 3, c. 37. That act declares that all offences committed on the high seas, out of the body of any county, shall be offences of the same nature respectively, and liable to the same punishments respectively, as if they had been committed upon the shore, and shall be enquired of, tried &c. as treasons, felonies, &c. are directed to be by 28 Hen. 8, c. 15. Now, this act applies prospectively as well as retrospectively; and consequently, if robbery be punished on land, it must be so at sea. From hence it results, that piracy at common law would be punishable in like manner with robbery upon the land; which penalty varies according to the degree of crime. And we might

perhaps, sum the matter up thus:—Piracy generally, with aggravation, is punishable under 7 Will. 4, & 1 Vict. c. 88, s. 2; piracy at common law, without aggravation, under 7 Will. 4, & 1 Vict. c. 87, c. 3, the new statute concerning robbery; and piracy by statute, without aggravation, under 7 Will. 4, & 1 Vic. c. 88, s. 3.^b

The Ecclesiastical Legal Guide for the Clergy, Patrons of Benefices, Solicitors, &c. By a Barrister. London: Hodson, 1837.

THE subject of Examination previous to admitting persons into the *Legal Profession* being now much under consideration, it may be appropriate to notice the mode of examining *Clerical Candidates*. We are enabled to state the following particulars from the first number of the *Ecclesiastical Legal Guide*, which is stated to be compiled from the papers and documents of the Secretaries of Archbishops and Bishops.

The following are the directions relating to candidates for orders:—

"Any person desirous of entering into holy orders must first ascertain the periods of that bishop's ordination to whom he intends to apply; and the papers which the candidate must send to the bishop, or usually to the secretary, a month before the day of ordination, are the following:—

1. A signification of his name and place of abode, and his intention of offering himself for the holy order of deacon (or priest), according to the first article of the archbishop's directions of 1748 and 1770.

2. Letters testimonial of his good life and behaviour for the three last years, according to the form subjoined, signed by three beneficed or licenced clergymen, well acquainted with him, and agreeable to the tenor of the 34th canon, and the fourth and fifth articles of the archbishop's directions. If he have not resided in the diocese wherein his title be situated, the letters testimonial must be countersigned by the bishop or bishops in whose diocese the subscribers reside.

3. A certificate of his age, copied verbatim from the entry in the register book, and attested by the minister and churchwardens of the parish where he was born, which is necessary by the statute 44 Geo. 3, c. 43.

4. The title upon which he is to be ordained, according to the form subjoined, and also a letter from the clergyman who gives the title,

^b See further, upon the subject of piracy. 1 Hawk. 251—263; 2 Hawk. 305; East P. C. 80, 104, 422, 792—813; 1 Russ. C. M. 100. 110; Crown Circ. Comp. by Ryland, 414—417.

signifying the reason which obliges him to appoint a curate. Respecting the title it is explained in canon 33.

5. A certificate of publication having been made in the church of the parish where he resides, of his intention to offer himself for holy orders, according to the form subjoined, and agreeable to the third article of the archbishop's directions, commonly called a *si quis*.

6. A certificate from the Regius Professor of divinity at Oxford, or the Norrisian Professor of Divinity at Cambridge, that the candidate has attended a course of lectures in divinity. This is implied in the 34th canon.

7. If the candidate come for priest's orders, he must (besides sending all the foregoing papers) bring with him and exhibit to the bishop his letters of deacon's orders.

In case the candidate were ordained deacon by the same bishop, it is not considered by most bishops as absolutely necessary that he should send in the whole of the foregoing papers again, but it is usual to write to the secretary of the bishop previously, to request his lordship may be solicited to dispense with all but the following; and if that be complied with, he has to send in only a testimonial from the time of his being ordained deacon, signed by three clergymen, as before mentioned, the title on which he is to be ordained priest, and a *si quis*.

If the candidate reside or have resided in the university until very near the time of his taking orders, he needs no *si quis*, as appears by the 3rd article of the archbishop's directions."

After some further details the writer states—

"On these papers being approved by the bishop, the candidate will have due notice of the time when, and place where, he is to attend in order to be examined as to his acquirements in learning; but as it generally occurs with candidates come from college, and have not an opportunity of being acquainted with three or more beneficed clergy, except those who may be in their college, in such cases a testimonial for the same period from their college is taken in place of that by three or more clergy;—but it is requisite that the college testimonial be signed by the heads of the college then in residence, and the tutor of the candidate, if possible, as well as sealed, and that it expresses the particular end or design for which such testimonial be granted, and that the candidate be believed qualified for the order to which he desires to be admitted, and that he then resides in the said college, or has only very recently ceased to do so, according to the archbishop's directions 1748 and 1770."

"When the papers are all sent in and found to be regular, the secretary of the bishop sends a circular letter to each candidate to attend at a certain day and hour for examination, giving each about a week's notice; the Deacons are examined one day, and the Priests the other.

The examination is generally before the

chaplain of the archbishop or bishop; and is, to some of the candidates, a moment of considerable anxiety. On their arrival at the palace, they are introduced by the secretary to the chaplain, and the former gives the latter a short list of the candidates' names, colleges, &c.

The chaplain gives to each a theme, upon which they are expected to write in a manner to prove their competence; they are then examined *viva voce* in Greek, and knowledge of divinity; and after all the candidates are examined, the chaplain makes his private report to the archbishop or bishop, and if the secretary find any name struck out of the list, it is a certain proof of rejection.

Some archbishops and bishops choose to examine the candidates themselves, and from time to time have issued lists of books with which it is expected candidates should be more or less conversant."

A list of the books in which the candidates are usually examined is then given; and it appears that there are a variety of causes, independently of want of learning, which render a person ineligible to receive holy orders: such as immorality of life, having officiated as a clergyman without being in orders, &c. The candidates generally attend on the Thursday and Friday, if the ordination be on the Sunday following.

The following is a statement of the matters intended to be comprised in the work:—

"Advowsons; Avoidance and Resignation; Archbishops and Bishops; Churches, Church Yards, and Burial Grounds; Church Leases; Consecrations; Colleges; Cathedrals; Royal, Proprietary, and other Chapels; Pews; Parish Clerks; Parochial and Church Charities; Donatives; Augmented, Perpetual, and other Curacies; Dilapidations; Dissenters; Exchanges of Glebe Lands; Endowments; Simony; East India Chaplains; Fees on Crown Presentations, on Promotion or Translation of Archbishops, Bishops, and other Ecclesiastical Business; Inclosure Acts, and Leases of Church Lands under same; Lecturers; Ordination; Patent Places in the Gift of Bishops, &c.; Parsonage Houses and Glebe; Ecclesiastical Records; Sequestrations of Livings for Debt and other Causes; Schools; Tithes; Puralities by personal union, Consolidation or Dispensation; Visitations of Bishops, &c."

QUESTIONS AT THE EXAMINATION.

Michaelmas Term, 1837.

COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

- What is an action?
- How must a landlord proceed in ejectment, to enable him to defend his rights?
- Must the service of the first proceeding in ejectment be upon the premises, or are there any exceptions?
- If there be two joint obligors in a bond, and one die, against whom must the action be brought?
- In what cases is replevin made?
- If a defendant neglect to appear, can the plaintiff appear for him; and how?
- Are any persons privileged from arrest; and if so, who?
- What, if any, is the difference between the liability of bail in error, and in other cases?
- When are bail discharged from their liability by the acts of the plaintiff?
- Several actions are brought against different defendants for the same cause of action. Is there any way of avoiding the expense of defending more than one action?
- What are the proceedings to enforce an award?
- What is a sequestration, and to what property does it relate?
- What property can be seized under a writ of elegit?
- If a witness have an interest in the result of an action, what, if any, is the mode of obtaining his testimony?

CONVEYANCING.

- What constitutes a title to an estate?
- What is the distinction between real and personal property?
- State the distinction between freehold and copyhold estates?
- What is an advowson?
- What are the different kinds of mortgages?
- A wife being seised in fee of lands, and dying before her husband, what interest does he take?
- Are freeholds liable to judgment debts, and how?
- What constitutes waste?
- Who should covenant for the production of title deeds not to be delivered over to the purchaser?

- Mortgage money not being paid, what are the remedies to which a mortgagee may resort?
- A deposit of deeds being made by way of mortgage, without a written memorandum, will this be a good security?
- What is a lease, and what are the general provisions relating to it?
- What are the usual covenants in an assignment of a lease?
- A lessee covenants to repair and pay rent: is he liable for rent if the building be uninhabitable from fire; and what exemption or relief is there?
- Where a tenancy is for a term of years certain, is any, and what, notice to quit required?

EQUITY AND PRACTICE OF THE COURTS.

- A plaintiff proceeds both at law and in equity. What proceeding can be adopted to protect the defendant, and when?
- Does an order take effect from the time it is pronounced, or the time it is served?
- When a party applies for an injunction, is the time when he first knew the circumstances, in regard to which the application is made, material? and give the reason.
- Can a demurrer be set down for hearing by the plaintiff, or by the defendant, or by both?
- An appearance being entered on the 2d November, what is the last day for demurring?
- What is the last day which the defendant has for putting in an answer to the amendment of a bill, before a replication can be filed, where the plaintiff has amended on terms of not requiring a further answer?
- A plaintiff having replied to a plea before it was set down for argument, can he dispute its validity?
- Are there any and what documents stated in an answer, which are privileged from production?
- Can the defendant obtain security for costs, from a plaintiff resident abroad, and when must it be applied for?
- What course would you advise a partner to adopt for his security, when his co-partner is likely to draw bills for his private use in the partnership name?
- A person engages to perform an agreement under a penalty. Can he relieve himself by offering the penalty, or will a Court of Equity compel the performance?

Will notice of the contents of a deed, be presumed against a party, from his having attested its execution ?

Where a purchaser would be affected by notice of an incumbrance, must such notice be actual, or would a Court of Equity hold any circumstances equivalent to notice ?

An executor having paid his testator's debts, so far as known, and divided the estate amongst the legatees, is called upon to pay another debt : will the same fall on the executor, or will Equity afford him any and what relief against the legatees ?

BANKRUPTCY AND PRACTICE OF THE COURTS.

Two creditors join in a fiat. What is the lowest amount of debt that must be due to them ?

What is the lowest amount when three or more creditors join in a fiat ?

Must the petitioning creditor's debt be contracted before the trading, or are there any exceptions ?

Is it necessary that the petitioning creditor's debt should be payable at the time of issuing the fiat ?

Will a debt contracted after the act of bankruptcy be sufficient to sustain a fiat ?

Must an act of bankruptcy be proved against each partner of a firm, or will the act of bankruptcy of one be sufficient ?

State some acts of a trader which will constitute acts of bankruptcy ?

Can a creditor be admitted to prove the trading or act of bankruptcy ?

How can a witness be compelled to give evidence before the commissioners of the trading, or bankruptcy ?

How may a creditor vote in the choice of assignees ?

How many creditors must sign a bankrupt's certificate to render it available ?

What are the consequences to a bankrupt if he do not surrender to the fiat ?

What acts will render a bankrupt's certificate void ?

When are the depositions under a fiat as to the trading, &c. conclusive evidence in an action ?

When does a renewed fiat become necessary, and how is it obtained ?

CRIMINAL LAW.

Describe the offence of embezzlement ?

Is forgery in any case punishable with death ?

What is the punishment for shooting at, cutting or wounding, with intent to maim, or do some grievous bodily him ?

Is burglary in any case punishable with death, and if so under what circumstances ?

What is defined to be the night time, with reference to burglary ?

On a prosecution for conspiracy, can the wife of one defendant be a witness for another ?

Can the evidence of an accomplice be taken, where he has had a promise of pardon or reward on condition of his giving testimony ?

Can a Mahometan be admitted as a witness, and if so, how must he be sworn ?

Can a party be convicted on the unsupported evidence of an accomplice ?

What is the meaning of the term theft-bote ?

Where the property of a partnership, consisting of many persons, has been stolen, is it necessary in the indictment to state the property as belonging to, and naming each of them, or will any other mode suffice ?

Can a person be convicted of perjury, where he has sworn only to his belief of the fact ?

If a pardon be granted to a person convicted of felony, can he afterwards give testimony ?

An indictment for perjury having been committed in an answer in Chancery, is it necessary to prove the hand-writing of the defendant, and if so for what reason ?

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SUPERIOR COURTS.

Lord Chancellor's Court.

MUNICIPAL CORPORATIONS REFORM ACT.—
CONSTRUCTION.—APPROPRIATION OF THE
CORPORATE ESTATES.—JURISDICTION.

*Held, that the act 5 & 6 W. 4. c. 76, for re-
gulating municipal corporations, consti-
tuted the old governing bodies trustees of
the real and personal estate belonging to
the corporations, from the passing of that
act to the time of the election of the new
governing bodies; and the alienation of
any part of the principal of the estates in*

*the meantime, even for the purpose of rais-
ing a fund for the endowment of ministers
of the churches within the boroughs, is in-
consistent with the trust, and with the pro-
visions of the new act; and this Court
retains its ordinary jurisdiction in matters
of trust to restrain such alienation.*

This was an appeal from an order of the Master of the Rolls, allowing a demurrer to a supplemental information filed early in the year 1836, by the Attorney General at the relation of Thomas Bolton and Timothy Jevons, merchants, and inhabitants of Liverpool, against the mayor and corporation of the borough, and against James Aspinall and others, trustees of a sum of 105,000*l.*, raised by the corporation in the end of the year 1835, by mortgage of the corporation estates, for the purpose of establishing a fund for permanent stipends to the ministers of the churches within the borough. Some of these ministers were made defendants to the supplemental information, which prayed, among other things, that the appropriation of the 105,000*l.* might be declared illegal, and that the same might be paid over to the mayor and new corporation, to be by them paid to their treasurer, to be carried to the account of the borough fund, and applied to the purposes to which that fund is applicable. The facts stated in the original and supplemental informations, with the arguments and the judgment upon the demurrer, are reported 12 Leg. Obs. 306, and 1 Keen, 513; see also a report upon a motion previously made to dissolve an injunction granted *ex parte* against the defendants to the original information before the Lord Chancellor, when he was Master of the Rolls, 1 Mylne & Craig, 171.

The appeal against the order of the present Master of the Rolls, allowing the demurrer of the defendants to the supplemental information, was argued last January, by the *Attorney and Solicitor General*, Mr. Kindersley, and Mr. Booth, for the relators, the appellants; and by Mr. Pemberton, Mr. Wigram, and Mr. Turner for the defendants, the respondents. The points of their arguments as well as the material statements in the information, are noticed in the following judgment, delivered on the 12th instant.

The *Lord Chancellor*.—The demurrer was filed by defendants to the supplemental information, who were not parties to the original information, but who made claim and derived title under deeds executed to them by the old corporation of the borough of Liverpool, after the institution of the suit against the latter, and before the new act for regulating the corporations came into operation. The demurring defendants, therefore, though not parties to the original information, claim under those who were defendants, and derive from them a title created *pendente lite*. The supplemental information, reciting the original one, commenced by stating the possession by the corporation of a large real and personal estate; and that it was indebted to divers persons to a large amount; that the corporation were patrons of

certain churches in Liverpool, the ministers of which had theretofore annually received 1,080*l.* out of pew rents and endowments under acts of parliament, and 1040*l.* out of parish rates, besides 2515*l.* gratuitously paid out of the funds of the corporation, of which 2515*l.* 1865*l.* had been so paid for more than seven years before the 5th of June, 1835, and therefore secured under the Corporations Reform act;^a that the corporation were about to raise 105,000*l.* upon the security of their corporate property, and to vest the same in trustees upon trust to pay 3665*l.* yearly out of the interest thereof to the ministers of the churches; and that for this purpose they proposed to charge property not before liable to such payment. It then recited certain charges in the original information, and amongst others, that there was reason to expect that the income of the corporation would not be sufficient to defray the charges imposed upon it by the act, and that a rate on the inhabitants would therefore be necessary. The supplemental information then stated, as supplemental matter, that the corporation had borrowed 63,440*l.* upon mortgage of parts of that property, (under a deed of the 21st December, 1835.) and had paid that sum, together with 41,560*l.*, in all 105,000*l.*, to certain of the defendants, upon trust out of the interest thereof, to pay stipends to sixteen ministers, amounting to 4035*l.*, which provision, it was stipulated, should be accepted by the ministers in lieu of the rates under the act of parliament, and of the allowances made to them out of the corporation funds, for the preceding seven years, the surplus monies (if any) arising from the fund to be paid to the treasurer of the borough fund; that the trustees had notice of the facts stated, and had undertaken to restore the fund, if the appropriation should not be deemed legal; that the members of the corporation, under the new corporation act, and the treasurer, came into office on the 26th of December, 1835, and that the town council had applied for the repayment of the money, but refused to take any further steps to procure such repayment without the direction and sanction of this court. The information prayed that the appropriation may be declared to be unlawful, and that the 105,000*l.* might be restored by the defendants, the trustees to the defendants, the corporation, and the income paid by the latter to the treasurer of the borough fund. To this information the trustees and ministers demurred generally, and the demurrer was allowed by the Master of the Rolls.

Now if this property of the corporation be subject to a public trust; and if the appropriation complained of be not consistent with such trust; and if there be not in the act for the regulation of municipal corporations any provision taking from this court its ordinary jurisdiction in such cases, then it should follow that the Attorney General has, under the circumstances stated, a right to pray that the fund may be recalled and secured for the pub-

lic purposes to which it is by the act devoted. I will consider these three questions in their order—First, Is the property in question subject to trust? It is immaterial to consider what were the powers of the corporation over this or their other property before the passing of the municipal reform act. That act passed on the 9th of September, 1835, and the new officers were to come into office on the 9th of November; but, by an order in council, the election of the new officers was enlarged to the 26th of December, 1835. By the first section all laws, statutes, and usages, charters, grants, and letters patent, inconsistent with or contrary to the provisions of the act, are repealed. So far, therefore, as former laws and usages authorized an exercise of power by the corporation inconsistent with, or contrary to, the provisions of the act, they were from the time of the passing of the act annulled. The 92nd section directs, that after the election of the treasurer of the borough, all the income of all the property belonging or payable to any corporate body in the shape of rents, profits, interest, dividends, and annual proceeds of all borough property, when the act passed, was to be paid to the treasurer; which fund so created, subject to the debts owing by the corporation at the time the act passed, or so much as the new council should think it expedient to redeem, and to the interest of such debt, was to be applied in payment of the salaries of officers, the expenses of the borough elections, sessions and prosecutions, corporation buildings, police, &c.; “and in case the borough fund should be more than sufficient for this purpose, then the *surplus* was to be applied under the directions of the council, for the public benefit of the inhabitants, and the improvement of the borough, &c.” And in case the borough fund should not be sufficient for all the purposes enumerated, power is given to the council to raise a sum to supply the deficiency by a borough rate in the nature of a county rate. His Lordship, after reading the 92d section, said it was to be observed that no power is thereby given to touch the principal of any part of the corporation property, the income alone constitutes the borough fund; the whole of the income is in the first place subject to the payment of the corporation debts, and afterwards to other purposes, all of a public nature, and in which the inhabitants at large have a direct interest, not only as entitled to participate in the benefit to arise from the execution of such purposes, but because the deficiency is to be raised upon them by a rate. The 97th section restrains the council of any corporation from selling, mortgaging, or alienating any lands, tenements, or hereditaments of the corporation, except in cases of contracts made before the 5th of June, 1835: and from leasing the same, except upon certain prescribed terms, without the consent of the Lords of the Treasury. This clause not only regulates the power for the future as to dealing with the hereditaments of the corporation, but invalidated any contracts inconsistent with such regulations made after

the 5th of June 1835; and this could only be done by a distinct enactment. This and the 95th and 96th sections are confined to lands, tenements, and hereditaments, and there do not appear to be any provisions respecting any appropriations of any other property of corporations prior to the passing of the act, except those contained in the 97th section. That section is most important to be considered on two grounds;—first, as to the evidence it affords of the intention of the legislature as to the appropriation of other property, besides lands, tenements, and hereditaments; and, secondly, as to the question raised for the defendants—that the jurisdiction of this Court is ousted by that section having provided another remedy for the cause of complaint raised by the information. I proceed now to consider the first of those points. As it was thought right that the new council should have the power of calling in question acts relative to the corporate property, effected between the 5th of June and the period of the election of the new officers—postponed by order in council from the 9th Nov. to the 26th December—it was absolutely necessary to give a distinct legislative authority, because, prior to the passing of the act, there was no mode of impeaching any acts of the corporation, however improper; (except the application of corporation property to the carrying of parliamentary elections,) and, because the identity of the corporation continuing, notwithstanding the alteration effected by the act, any such attempt on the part of the new council would be an attempt by the corporation to impeach its own acts. Such provision, therefore, was absolutely necessary, and the obvious intention of this clause was to subject to revision all acts of the corporation after the 5th of June, affecting any disposition of the corporate property, and for that purpose, it makes it lawful for the council to call in question all divisions and appropriations of moneys, goods and valuable securities, or other parts of the real or personal estate, of which before the 5th of June 1835, the body corporate was possessed, made between that 5th of June and the declaration of the election; and if it appeared to the council that such diversion or appropriation was collusively made for no consideration, or for an inadequate consideration, to institute the proceedings by that section prescribed before a jury of the county, in order to ascertain the value of the premises, and the consideration given for the appropriation thereof. His Lordship, after reading the section, observed, that there was some obscurity in the expressions used in the directions as to summoning of a jury being confined to lands, tenements, or hereditaments. Upon that he would give no opinion; but supposing them to apply to appropriations of personal as well as of real property of the corporation, he conceived that the intention to be inferred from the whole clause was, to secure the corporation from all appropriations of property, after the 5th of June, made collusively for less than the value. In his opinion the 92nd section did not require the aid of the

97th section; but taking the whole together, he could not doubt that a clear trust was created by this act for the public, and therefore, in the legal sense of the term, for charitable purposes, of all the property belonging to the corporation at the time of the passing of the act, and that the corporation, in its former state, holding, as it did, the corporate property until the election of the new council and treasurer, was in the situation of trustees for those purposes, subject to the restrictions specifically imposed by the act, and subject to the general obligation and duties of persons in whom such property is vested. Upon the first point, therefore, his Lordship was clearly of opinion, that from the time the act passed the corporation property was trust property, and upon this point he had the satisfaction of thinking that no material difference exists between his opinion and that of the Master of the Rolls.

Assuming, therefore, that the corporation property was, from the passing of the act, trust property, still vested in the corporation, as it then existed, by the postponement of the time for the election of the new council and the appointment of the treasurer—waiting the arrival of that time to be applicable to the several public purposes prescribed by the act:—the second question is, whether the transaction relative to the 105,000*l.*, as stated in the supplemental information, was consistent with such trust, or conformable to the provisions of the act. It consisted, in part, of a mortgage of part of the property of the corporation, which the new council are, by the 94th section, prohibited from making; but it was principally an appropriation of a portion of the income of the corporate property for purposes which, however laudable in themselves, and beneficial to the interest of the inhabitants, cannot be said to be consistent with the trust to which the property was by the act devoted. The information states the debt of the corporation to be large, and, by the act the whole of the income is made primarily liable to pay the interest of the debt, and, at the discretion of the new council, to the payment of the principal; and next in making the several other payments. Whether there will be any surplus of income is not stated; that probably must depend upon the discretion to be exercised by the new council as to the payment of the principal of the debt out of the income of the property; a discretion which, by the appropriation in question, is taken away to the extent of the interest of 105,000*l.* The whole income being primarily liable to the payment of the expenses prescribed by the act, the inhabitants, and the Attorney General on their behalf, may justly complain of a diversion of any part of it whilst those objects remain unprovided for. There is no statement that there will not be a surplus, but a trustee cannot justify the application of part of the trust fund to other purposes by suggesting that enough will remain of the fund to answer the purposes of the trust. A case may be supposed of the income of the corporate property being so large, that after providing for the

payment of the interest of the debt due by the corporation, and so much of the principal as the council may think it advisable to pay, and after supplying the means of defraying the expenses of all services directed to be paid by the 92d section, a surplus may remain applicable under the provision of that section to the public benefit of the inhabitants and improvement of the borough. Under such circumstances the appropriation in question might be most proper; but at whose discretion and direction is the application of the surplus so to be made?—Not of the corporation as it existed before the election of the council, but of the new council; and after previously providing for all the prior objects. The payment to the ministers of any churches or chapels out of the income of the borough fund is by the 68th section, such as shall have been paid for seven years before the 5th of June, 1835. Such is the limit of the trust for this purpose declared by the act. Can it be consistent with such a declaration of trust to appropriate to the ministers, not only what they had received for seven years before the 5th of June, 1835, but also what had commenced within that period? By the 139th section, all advowsons and church property belonging to the corporation are directed to be sold, the proceeds invested, and the income paid to the treasurer, as part of the borough fund. How inconsistent with the object and spirit of this clause is the appropriation of the corporate property, to the adding to the provisions of the ministers of churches? Upon the second head, therefore, I am also of opinion that the facts stated upon the information constitute a case which entitles the Attorney General, on behalf of the inhabitants, to demand the interference of this Court, unless its jurisdiction is taken away by the act.

Upon the third point, I am happy to find the Master of the Rolls concurring in the opinion I have formed. The argument in support of the proposition that the jurisdiction of this Court is taken away, rests entirely on the 97th section, which, in the cases there specified, authorises and enables the new council to institute certain proceedings, and to submit the matter in dispute to a jury. And it is argued that this clause gives a new right and prescribes a remedy; that the right exists only in the remedy, and that no other course of proceeding but that prescribed can be resorted to. This may be true as to transactions between the 5th of June and the 9th of September, when the act passed, because at that time there was no trust: but if it be true, as seems universally admitted, that from the passing of the act a trust of some sort existed, such trust must have all its legal consequences, and the *cestui que* trusts were therefore entitled to all their legal remedies. The argument assumes that the machinery provided by the 97th section applies to the case in question, and is not confined to alienations of land, tenements, and hereditaments for valuable consideration. If it be so confined, then the whole foundation of the argument fails. But suppose the new council had, under this clause,

the power of bringing the case in question before the jury, it would be a new remedy; but the right cannot be said to consist in the remedy, inasmuch as the creation of the trust itself subjects the property to all the remedies applicable to the trust. If this 97th section had not been in the act at all, the jurisdiction of the Court could not have been disputed, which proves the right does not consist only in the remedy, but that the remedy, if applicable to the case at all, affords an additional means of enforcing the right. The jurisdiction of this Court cannot be taken away by another jurisdiction having cognizance given to it in the same matter. In *Beckford v. Hood*,^b it was justly held that “the party going for the infringement of the copyright does not deprive the party entitled of all remedy for the infringement of his rights, although the same act that gave the right gave the remedy.” Besides, in this case, the remedy is not given to the same person; and the argument is, that the summary remedy given to the council is to deprive the public, and therefore the Attorney General on their behalf, of the right of applying to this Court for its ordinary interposition in cases of breaches of trust. On this third point, therefore, I am also of opinion that the jurisdiction of this Court attached upon the property in question the moment it became trust property, and that there is nothing in the act to deprive the Court of its jurisdiction. Then it was said, assuming the property is subject to a public trust, and that the Court has jurisdiction, there is not, upon the face of this supplemental information, such a case stated as makes it proper for the Court to interfere. It has been said that the corporate property became affected by a trust to some extent only, and that this trust was not intended, under all circumstances whatever, to prevent the old governing body from alienating property, the income of which, if not alienated, would have to form part of the borough fund, and that they were not precluded from the fair application of the corporate property for the benefit of the inhabitants, and that it did not appear the appropriation in question was not an application of that description. I cannot adopt this construction of the act. The trusts created and declared by the act are distinctly specified, and if so, it is contrary to the very nature of a trust, that any right should exist, unless specifically given to the parties who are the depositories of that trust, to defeat the trust. That would be the only rule and limit by which the control of the Court would be regulated. If the old governing body had the right of alienating or appropriating property which would otherwise become subject to a trust, why may they not so alienate or appropriate the whole? If they might, at their discretion, reduce the trust, why may they not also destroy it? That the new governing body could not so deal with the trust property is admitted. In the hands of the new council the capital was to

^b 7 T. Rep. 620.

be inalienable, and the whole income subject to a certain public trust; but until such a council could be appointed, the capital necessarily remained in the legal possession of the old governing body. Could it have been intended that during the interval the old governing body should have the right to alienate the capital, and thereby defeat the trust for the future? If all the income of a specified capital be by any will or deed directed, after a certain day or certain event, to be applied to certain trusts, whether of a public or private nature, would not this Court protect that capital in whose hands soever it might be vested? The creation of the future trust of itself restrains the exercise of any former power inconsistent with the security of the fund or the performing of the trust, unless the act itself permits the exercise of it. Then it is said that the 97th section impliedly does so, and that the old governing body might sell or appropriate the corporate property for a sufficient consideration. That clause has, unfortunately, mixed up in one enactment two distinct periods, the circumstances of which are essentially different, namely, the period between the 5th of June and the passing of the act, during which the power of the old governing body was absolute over the corporation property (except as before mentioned), and required therefore an enactment to control any abuse of it in the contemplation of the act; and the period from the passing of the act until the election of the council and treasurer, during which, the trust being created, no such absolute power existed, but a summary remedy against any improper act was given. But it is sufficient for the purpose of my consideration at present, to observe that the transaction stated in the information is not one intended to be protected by the clause, inasmuch as it cannot be said, according to the facts stated, to be an appropriation for a full consideration; and if that clause gave the old governing body the power of alienation, after the act passed, such power must be limited to cases in which the full value has been received in the nature of money or property, which would therefore leave the same amount applicable to the purposes of the trust. If the old governing body was bound by a trust, it had no right to exercise such a discretion, which by the act applied only to the surplus after all the specified trusts were provided for, and which also was to go to the new council only, and not in any case to apply to any part of the capital of the corporate property.

Another ground on which it is said that this Court ought not to exercise its jurisdiction, is the remedy given by the 97th section to the new council to control the acts of the former governing body, and the power given by the crown to order, by order in council, such acts not to be called in question under the provisions of this act. This proposition assumes, that the case stated in the information is within the 97th section; and, admitting that the jurisdiction of this Court is not taken away by

the provisions of that section, it proceeds on the ground that the remedy provided by that section, ought to have been resorted to. To this, it appears to me a sufficient answer, that the party who alone could exercise that power given by this section, and the party filing this information, are not the same; and I see no principle on which I could deny to any one the right of suing, to which he would otherwise have been entitled, because another party, over whom he would have had no control, declines to follow a mode of proceeding open to him alone, which I may think preferable; and I must observe the power of the crown in council to protect the act of the old governing body from being questioned, is confined in terms to their being in question under the provisions of this act. The order in council is not to give validity to the act complained of, but only to protect it from being called in question by the summary process given by that section. I cannot think that the giving that summary remedy to another body, which, as the information alleges, refuses to exercise it, ought to induce this Court to refuse to exercise its own jurisdiction. If there be a clear surplus of the borough fund, constituted by the income only of the corporate property, an appropriation of such surplus for the purposes intended to be effected by the transaction in question, may be the most beneficial application of it for the inhabitants, and therefore the most proper to be adopted. But such is not the case stated in this information; and beyond the power of applying such surplus, the town council itself has no power or discretion given to it. I have considered this whole case with the greatest attention; the amount of the property and the opinion expressed by the Master of the Rolls on some of the points leading to his decision (although he agrees with me in the most important point) demanded this of me. Upon the statement in the supplemental information, and with reference to the provisions of the act, I cannot come to the conclusion that this Court ought to refuse to entertain its ordinary jurisdiction. I am therefore of opinion, that the demurrer ought to be overruled.

Attorney General v. Aspinall, January 9th and 10th, and November 12th, 1837.

King's Bench.

[Before the Four Judges.]

LIBEL.—PLEADING.

If a libel is alleged in an information to be "false, scandalous, malicious, and defamatory," it seems that such allegation may be supported by proof that it is defamatory, for that what is defamatory is scandalous, and the truth of the libel is not in question.

A Judge may direct a jury to find a defendant guilty on such a charge, upon the mere proof of publication.

Mr. Carus Wilson, the defendant in person, appeared to move for a rule to shew cause why a new trial should not be granted in this

case. It stated that a criminal information had been filed against him for the publication of a libel, and that the case was tried at the last assizes at Stafford before Lord Abinger, when a verdict of guilty was pronounced. The ground of his present application for a new trial was, that the learned Judge had misdirected the jury. The information charged, that the alleged libel was a "false, scandalous, malicious, and defamatory libel." The learned counsel who opened the case on the part of the prosecution, distinctly stated to the jury, that the truth of the libellous matter was not to be enquired into in that Court, for that that had been disposed of in the Court above, and soon afterwards, and after there had been no other evidence given than the mere evidence of publication, the learned Judge told the jury that they were to try whether the libel was malicious and scandalous; and that they had nothing whatever to do with the truth or falsehood of the matter. In stating this in that broad manner to the jury, he added, that it was his duty to confirm the statement made by the learned counsel who had opened the case, as to the law relating to these matters; and he directed the jury, that in his opinion, the publication prosecuted was libellous and defamatory. The learned Judge gave the jury this direction, though he must have known that by the provisions of the 32 Geo. 3, c. 60, it was enacted, that on the trial of any indictment or information for libel, "the jury shall not be directed by the Judge or Court before whom such indictment or information shall be tried, to find the defendant guilty, merely on proof of the publication of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information." The direction to the jury given by the learned Judge in this case, was clearly against the provisions of that statute, and as it had no doubt influenced them in returning their verdict, that verdict ought to be set aside and a new trial granted.

Lord Denman had left the Court.

Mr. Justice Patteson.—I have not the slightest doubt about this case. The direction of the learned Judge was perfectly correct. It is matter of every day experience—it is a practice that every one in the profession is acquainted with, that in a proceeding of this kind, the truth or falsehood of the libel is not in issue in an information for libel. The learned Judge was therefore perfectly right in directing the jury as he did direct them. It is not necessary now to go into an explanation of the subject, to shew what the law is, for it is stated in all the books relating to this matter, and there cannot be the least doubt about it in the mind of any lawyer whatever. The learned Judge was right in confirming the statement of the counsel, who had stated what was quite correct, and had in the first instance told the jury what the law was. If the law was rightly stated by the counsel, it was the duty of the Judge to repeat and confirm the statement. It was clearly right in the Judge to call on the jury to decide what was the cha-

racter of the libel as to its being a scandalous publication. What is defamatory is scandalous, and the jury were rightly directed in having the law so stated to them.

Williams, J., and Coleridge, J., concurred.
Rule refused.—*The Queen v. Wilson, M. T. 1837. K. B. F. J.*

Common Pleas.

AFFIDAVIT OF DEBT.—PRISONER.

An affidavit of debt, alleging the defendant to be indebted in the sum of 184l. on a promissory note, drawn for a like sum, is sufficient.

In the jurat the affidavit being stated to be sworn by virtue of "a commission forth from the Court of Common Pleas," the word "issued" being omitted, it is sufficient.

An application to discharge a prisoner out of custody on the ground of the irregularity of the affidavit of debt, must be made within the time limited for entering an appearance.

Hurlstone moved for a rule to shew cause, why the defendant should not be discharged out of custody on his entering a common appearance, on the ground of the irregularity of the affidavit of debt. It was upon a promissory note, and the amount of the note was not stated. *Molineux v. Dorman*, 3 Dowling's Practical Cas. 662. The affidavit set forth that the defendant was indebted in the sum of 184l. on a promissory note, made payable for the like sum.

Tindal, C. J.—That clearly indicates the amount of the note, and the objection cannot prevail.

Hurlstone then objected to the form of the jurat. The affidavit was stated to have been sworn in *Dublin*, before a commissioner "by virtue of a commission forth from his Majesty's Court of Common Pleas," the word "issued" being omitted.

Tindal, C. J.—I think the meaning is so clear that it cannot be misunderstood, and the omission is immaterial.

Hurlstone took a third objection that the affidavit was not entitled in any Court. He pointed out the rule of Hilary Term, 2 W. 4, by which an affidavit, sworn before a Judge of either of the Courts of King's Bench, Common Pleas, or Exchequer, was directed to be received in the Court to which such Judge belonged, though not entitled of that Court, but not in any other Court, unless intitled in the Court in which it was to be used.

Tindal, C. J.—You may take a rule on that point.

Hurlstone pointed out that the case had already been before a Judge at Chambers, and an objection had been there taken that the application was too late, and the matter had stood over by consent in order that the opinion of the Court might be obtained upon the subject. The defendant was arrested on the 25th of

July, and the case was before the Judge on the 15th of August.

Tindal, C. J.—The rule is, that such an objection should be taken before the time limited for putting in an appearance has expired.

Hurlstone pointed out that the authorities were rather contradictory upon the subject; and he cited *Rock v. Johnson*, 4 Dowl. Prac. Cas. 405, from which it appeared that the rule was not so strict with regard to prisoners. *Primrose v. Baddeley*, 3 Dowl. Prac. Cas. 350, was a decision that the rule in both cases was the same; but Mr. Baron *Byeley* in his judgment, intimated that if an affidavit accounting for the delay had been produced, the application would have been granted. *Fowell v. Petre*, 5 Dowl. Prac. Cas. 276, was an authority that a prisoner coming after 19 days, was too late. He now had an affidavit to account for the delay. The affidavit stated, that the defendant was in such a state of ill health, as entirely to forbid his attending to business.

Tindal, C. J.—I do not think that is a good reason. Personal bodily affliction is insufficient, but the reason should be, that his attorney had deceived him, or had acted unfairly towards him; but upon such a ground as that suggested, we cannot say that the defendant is excused. Want of money might be set up as an excuse in some future case. The application is too late, and cannot be granted.

Rule refused—*Daley v. D'Arcey Mahon*, M. T. 1837. C. P.

Queen's Bench.

ORDER OF BUSINESS.

Thursday, Nov. 16	} New Trials.
Friday .. 17	
Saturday .. 18	
Monday .. 20	
Tuesday .. 21	

The last four days of the Term, Motions and Peremptory Paper

EXAMINATION OF ATTORNEYS.

It appears that 103 out of the 127 candidates for Examination, attended on the 16th instant, and were examined in the Hall of the Law Society. We hear that many of the gentlemen passed the Examination with very great credit; and that the majority displayed a satisfactory degree of knowledge, suited to their profession. It may be supposed that some were only moderately fitted to pass, and it is yet undecided how many must undergo a re-examination, or be postponed for further and more diligent study.

If we rightly collect the practice generally pursued by the Examiners, nothing can be

more fair to the candidates than the rules laid down. There are five departments, comprising all the varieties of Town and Country Practice, and fifteen questions are put in each. If the candidate answer satisfactorily the majority of the questions in three of these departments, he obtains his certificate. If he fall short of this point of excellence, his case is then minutely considered; and before he is rejected, the full amount of the legal knowledge he has evinced, taken generally in all the departments, is duly estimated.

We have been enabled to give our readers in another part of this number, the substance of the Questions which were put on this occasion; and they appear to be well adapted to ascertain the fitness of the candidates for admission. Some of them are easy enough; yet, from their general application, necessary to be promptly answered. Others are adapted to call forth the result of some extent of reading, and practical experience in important cases. On the whole, the business seems to be well conducted; aiming at a useful result, and suited to the purpose which the Judges had in view in making the Rules under which the Examiners are acting.

THE EDITOR'S LETTER BOX.

If "Viator" will look into the books on Turnpike Law, and state the result of his research, and the difficulty he *then* feels, some of our Correspondents may assist him; but he should shew an example of diligence before he calls on others to help him.

The same remark applies to M. M. on the wills of married women.

We are sorry we cannot assist a Correspondent at Taunton. We feel for the grievance, but the insertion of his statement would *now* at least, do no good.

The question of B*, evidently depends on establishing the facts of the case. There can be no doubt about the law.

We are not authorized to insert the announcement of the Irish Law Precedents, except as an advertisement.

The Letter of F. J. S. shall be considered, but we doubt whether the Law Lectures he refers to, are suited to the general scope of this Work, though we agree with him it is desirable they should be published.

The Quarterly Digest of all reported Cases, completing the Volume for 1837, is now published.

The Legal Observer.

SAURDAY, NOVEMBER 25, 1837.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HONAT.

ON THE LAW OF MAINTENANCE.

MAINTENANCE is an offence that bears a near relation to barratry; being an officious intermeddling in a suit that in no way belongs to one, by maintaining or assisting either party with money, or otherwise to prosecute or defend it,—a practice that was greatly encouraged by the first introduction of *uses*.^a Maintenance is an offence at common law, and is either *ruralis*, in the country; as where one assists another in his pretensions to lands, by taking or holding the possession of them for him; or where one stirs up quarrels or suits in the country; or it is *curialis*, in a court of justice, where one officiously intermeddles in a suit depending in any court, which no way belongs to him, and he had nothing to do with, by assisting the plaintiff or defendant with money or otherwise in the prosecution or defence of any such suit.^b Not only he that lays out his money to assist another in this cause, but he that by his friendship or interest saves him that expence which he might otherwise be put to, is guilty of maintenance.^c And if any person officiously give evidence, or open the evidence without being called upon to do it; speak in the cause as if of counsel with the party; retain an attorney for him, &c.; or shall give any public countenance to another in relation to the suit, as where one of great power and interest says that he will spend 20*l*. on one side, &c.; or such a person comes to the bar with one of the parties, and stands by him while his cause is tried, to intimidate the jury; if a juror solicit a judge to give judgment according to the verdict, after

which he hath nothing more to do, &c.; these acts are maintenance.^d

A man cannot be guilty of maintenance in respect of any money given by him to another, before any suit is actually commenced; nor is it such to give another advice, as to what action is proper to be brought, what method to be taken, or what counsellor or attorney to be employed; or for one neighbour to go with another to his counsel, so as he do not give him any money; and money may be lawfully given to a poor man out of charity, to carry on his suit, and be no maintenance. Attorneys may lay out their money for their clients, to be repaid again, but not at their own expense, on condition of no purchase no pay, if they carry the cause or lose it.^e

By the common law, persons guilty of maintenance may be prosecuted by indictment, and be fined and imprisoned, or be compelled to make satisfaction by action, &c. And a court of record may commit a man for an act of maintenance done in the face of the court.^f

There have been several cases in Equity on this subject.

Persons having a common interest may agree to unite in a defence, but the agreement must not go beyond the common object; and therefore an agreement by several owners and occupiers of land in a parish to concur in defending any suits that may be commenced against any of them, by the present or any future rector, for the tithes of articles covered by certain specified moduses, binding themselves not to compromise or settle, and not limited to their continuance in the parish, or to any particular time, is illegal.^g

^a 4 Bla. Com. 134.

^b Co. Litt. 368*b*; Hawk. P. C. b. 2, c. 83.

^c Bro. Maint. 7, 14.

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^d 1 Hawk. P. C. c. 83.

^e Peterad. Abr. Maint.

^f Co. Litt. 368*b*; 1 Hawk. P. C. c. 83, s. 1.

^g Stone v. Yea, 1 Jac. 426.

But the case of the greatest interest to our readers in general at the present moment is the case of *Wallis v. The Duke of Portland*,^a which we lay before them without comment, it being our duty simply to state the law as we find it.

This case was a bill for discovery whether the plaintiffs were not employed by one defendant, a peer, as solicitors, to present and prosecute a petition on behalf of the other defendant, complaining of a return of a member of parliament, and praying that he might be declared duly elected; to this bill a demurrer was allowed, on grounds of public policy, and because the discovery could have no effect, and principally because such transaction would amount to maintenance at common law.

Lord Loughborough, C. said,—It is not from any doubt I entertain, but in order that I may give my opinion more correctly, the I wish to defer it. The point happens not to be entirely new to me: for some years ago, there was a case in the Court of Common Pleas, that led me to the topics of argument in this case. It was an action brought by Mr. Shaw, for the expenses of the petition against Sir Thomas Beavor for Norwich. The defence was, and the fact was true, that certain persons, probably electors, had put the defendant upon petitioning, upon an undertaking that they would pay all the expences, and he had nothing to do but to give his attendance; that they retained Shaw and counsel. The agent was not the defendant's agent, and was never employed by him upon an election or other business. All was communicated to Shaw from time to time, and at the beginning. Serjeant Adair was counsel for the defendant. Upon my direction to the jury, not doubting the evidence, they found a verdict for the plaintiff. My direction was founded upon this; that the party petitioning and attending the petition, could not, by setting up the engagement of any other person, deliver himself from the expenses of his own suit. In that case this circumstance occurred; that so many as were electors might have a sort of interest in their representative. That led me to consider, in case an action had been brought against them, how far it could be maintained. No application was made to the Court to set aside the verdict. At that time, from the value and novelty of the case, I looked a good deal into it; in what cases it fell directly within the legal description

of maintenance; in what it was against the policy of the law to permit such suits against persons, not the immediate parties. When this cause was first opened to me, I had the grounds of that opinion before me. [And on a subsequent day, his lordship addressed himself to the circumstances before him.] This is an engagement between two parties, to the injury and oppression of a third: in short, it is maintenance; for maintenance is not confined to supporting suits at common law. In the first book you open upon the subject (one naturally looks into *Hawkins*), it is stated to be either *in pais*, or by prosecuting suits. Maintenance *in pais*, is punishable by indictment. Maintenance by prosecuting suits, without distinguishing what suits, is punishable by an action by the party grieved also: and that is an action at common law. Statutes prohibiting particular species of maintenance, add penalties; but it is laid down as a fundamental authority, that maintenance is not *malum prohibitum*, but *malum in se*: that parties shall not by their countenance aid the prosecution of suits of any kind; which every person must bring upon his own bottom, and at his own expense. There is no case in contradiction to this. An action would lie at common law: I can have no doubt upon that. An action for a malicious suit in the Ecclesiastical Court, is commonly and frequently maintained. In the several cases to be found in Anstruther, (there are three of them) the Court has always gone upon the idea, that it is impossible to sustain a bill for discovery, the effect of which would be to bring out a case of maintenance. The manner in which it is considered at law, is strongly illustrated in *Pierson v. Hughes*,¹ which was an action of debt upon bond, for money expended and to be expended in the prosecution of that suit. Upon the first argument it was held maintenance; that giving the bond was as great an evil as laying out money. *Maynard*, as *amicus curiæ* stated that to speak to a counsel or an attorney to encourage the suit wherein he had no interest, had been adjudged maintenance. Upon the second day, the argument took this turn; that as only a bond was given, no maintenance was in fact committed, upon the common maxims, "*non officit conatus nisi sequatur effectus*." The answer of *Vaughan* was, that a bond given to maintain or kill will be void, though the act never ensue. *Atkins*, Justice, was of opinion that a bond

^a 3 Ves. 494.

¹ 1 Freem. 71, 81.

given while the suit was depending, for what was already expended, was maintenance; because an encouragement to go on with the suit. The result of the cause is immaterial to the argument; because the Court was of opinion, and very properly, that the defendant was mistaken in demurring, and ought to have pleaded; for there is a justifiable maintenance, arising from *the privity of the parties in estate, or from their connection as master and servant.* Therefore there was a possible case, in which that bond might have been available at law; and that ought to have been negatived by plea. I do not go into the argument which was very properly urged in support of the demurrer, upon considerations of public policy: because I am of opinion, upon the whole of the case, that it is directly stating a transaction of maintenance; praying a discovery of that which, if the discovery was made, would be *malum in se*; therefore, I am of opinion, it is not fit for a Court of Equity to permit this suit to proceed any farther. Allow the demurrers with costs."

There was an appeal to the House of Lords from this judgment,² in which the respondents simply relied on the ground of the transaction being a case of maintenance. It is signed by John Scott, James Mansfield, Thomas Erskine, and R. Pemberton.

The appeal was dismissed,¹ with 200*l.* costs, without calling on the respondents for any argument; and, besides the Chancellor, other noble Lords were present, among whom was Lord Kenyon, then Chief Justice of the King's Bench.

ON LIMITATIONS TO THE SEPARATE USE OF MARRIED AND UNMARRIED WOMEN.

WE have from time to time brought before our readers, full information on the subject of the validity of limitations to the separate use of married and unmarried women, and clauses against anticipation, which is certainly one of great practical importance. When we first² endeavoured to state the law relating to it, adverting chiefly to the cases of *Jones v. Salter*, *Barton v. Briscoe*, *Woodmeston v. Walker*, *Brown v. Pocock*, and *Newton v. Reid*, all fully stated, we

ventured to come to the following practical conclusion.

1. "That a clause against anticipation is in certain cases valid; but that the doctrines of Equity supporting it will not be carried farther than it has been already.

2. "That it will be supported when it is intended to apply to any marriage existing at the time in which the settlement, or will in which it is inserted, is made.

3. "That it will cease to be of force after such marriage is at an end.

4. "That if it apply to an existing marriage, it will be valid, although the fund be not given over in the event of any attempt to anticipate.

5. "That in all other cases, if the fund be not given over in the event of any attempt to anticipate, the clause against anticipation will be void and ineffectual, and the person entitled to the fund may claim it.

6. "That if the fund be thus given over, a clause against anticipation, although a marriage does not exist at the time at which the deed or will is made, will be valid.

7. "That a clause against anticipation, cannot be made to extend to successive marriages, but will be exhausted by the first."

It may be now useful to see, at the distance of nearly four years, whether these rules have been altered by the subsequent decisions.

By far the most important case since reported, is *Massey v. Parker*,^b in which there was no clause against anticipation, but by which it was decided that a limitation for the separate use of an unmarried woman, was invalid, and which in all other respects fully confirms the rules which we laid down, and which are also supported by the Vice Chancellor in the case of *Knight v. Knight*.^c

The Vice Chancellor, however, in the case of *Davies v. Thornycroft*,^d having the case of *Massey v. Parker* brought before him, held, that a limitation to the separate use of an unmarried woman *was* valid; but this case leaves untouched all the other points of the subject.

There have been also the cases of *Benson v. Benson*,^e *Stiffe v. Everit*,^f and *Tullett v. Armstrong*,^g all relating to the same point, but none of them decided with reference to

^b 2 Myl. & K. 174, and 9 L. O. 203 and 229.

^c 6 Sim. 121; 10 L. O. 273.

^d 6 Sim. 470; 11 L. O. 293.

^e 6 Sim. 126; 10 L. O. 294.

^f 1 Keen, 428; 11 L. O. 305.

^g 1 Keen, 428; 12 L. O. 404.

² 8 B. P. C. 168.

¹ Lords' Journals, 5th April.

^a 7 L. O. 113, Dec. 14, 1833.

general principles, and all fully reported in these pages.

We have now to refer to the last case on the subject, which we regret to say is also decided on its own circumstances, and leaves this important subject still in an unsettled state. This is the case of *Johnson v. Johnson*, decided in June last, which was first reported in these pages,^k and has been subsequently given by Mr. Keen.¹ In this case it was held by Lord Langdale, M. R., that a female infant, entitled to a legacy of stock, given in trust to be accumulated till she should attain twenty-one, and to be then transferred to her for her separate use, could not transfer her interest in such legacy by the act of the marriage to her husband, and that if married at the time when she attained her majority, she took an absolute interest in the legacy for her separate use. We shall add the judgment, as given by Mr. Keen.

"It is argued on the part of the plaintiff, that, taking the principle laid down in the Lord Chancellor's judgment in *Masey v. Parker* to be, that a woman to whose separate use property is given may, if she marries at a time when she has the power of alienation, give that property by the act of marriage to her husband, the point involved in that principle does not arise in the present case, because the plaintiff married at a time when she had not the power of alienation, and consequently did not transfer the property by the act of marriage. If I shall be of opinion that the infancy of the plaintiff at the time of her marriage does not take this case out of the rule, the general point is one of so much importance that I shall consider it right to have this case re-argued.

"On the following day his Lordship gave judgment as follows: I am of opinion that the general point does not arise in this case. The opinion of the Lord Chancellor, expressed in *Masey v. Parker*, seems to have been founded upon this, that the right and interest of the woman, to whose separate use the property was assumed to be given, were absolute before the marriage; that, the trustees holding the property absolutely for her, she might take it for herself, or give it to any one; and there was no reason, therefore, why she might not give it by the act of marriage to her husband. In the present case no one of these circumstances occurs. The estate and interest of the woman were not absolute before marriage; the trustees did not hold the legacy absolutely for her, and she could not take the legacy for herself, or give it to any one. She could not, from her infancy, assign or dispose of her contingent interest; and when the legacy became vested and payable, that is, when she attained the age of 21, and first acquired the right of disposing of the property, she was a married woman, in

whose favour, according to all the authorities, a trust for separate use will be valid. I could not decide against the validity of this trust in the events which have happened, without overruling the case of *Simson v. Jones*, 2 Russ. & M. 365, which was decided by Sir John Leach upon much consideration. I consider that when the plaintiff attained her majority, she acquired an absolute interest in the legacy to her separate use, and that she is entitled, therefore, to have the fund transferred to her for her separate use, according to the prayer of the bill."

It is to be observed that all these cases are independent of the general doctrine of Equity, that a woman entitled to a fund for her separate use, can deal with it as a feme sole, which doctrine is perhaps carried to its full extent in the case of *Lynn v. Ashton*,^m where a feme covert, having an interest for life to her separate use, and a power of appointment of the fund by deed to take effect after her death, assigned her life interest, and appointed the fund after her death to trustees, upon trust to invest the fund in the immediate purchase of an annuity for life; and Sir John Leach, M. R., ordered a transfer of the fund to the new trustees accordingly.

THE PROPERTY LAWYER.

DISCHARGE OF TRUSTEE.

A PERSON once having undertaken the office of trustee, either by actual acceptance, or by construction of law, cannot discharge himself from liability by a subsequent renunciation. The only mode by which he can obtain a release, is either under the sanction of a Court of Equity, or by virtue of a special power in the instrument creating the trust, or with the universal consent of the parties interested in the estate. See *Doyle v. Blake*, 2 Sch. & Lef. 245; *Caloner v. Bradley*, 1 J. & W. 68; *Lewin on Trustees*, 260. The following is an instance of an application to a Court of Equity on the subject.

The trustee of a marriage settlement, being desirous of retiring from the trusts in consequence of the responsibility to which they were exposed by the acts of the tenant for life, in repeatedly charging the trust estates and funds with annuities and other incumbrances, filed a bill to be discharged from the trusts, and for the appointment of new trustees under

the direction of the court. The decree sought by the plaintiffs was not resisted by any of the defendants, and the only question was, whether the costs were to be borne by the tenant for life, or to be paid out of the trust funds.

The Master of the Rolls.—The relief sought by the plaintiffs is to be discharged from the trusts of the settlement, made on the marriage of Thomas W. Coventry and his wife, and to have new trustees appointed under the direction of the court, it appearing upon the pleadings that in consequence of the embarrassed state of the fund occasioned by himself, the tenant for life has been unable to procure new trustees. Are these trustees under the circumstances stated in the bill, to go on in the execution of a trust, which they undertook only for the benefit of the tenant for life and his family, but which, by his conduct, has involved them in difficulties and responsibilities which they never contemplated? I am of opinion that they are not. I had lately to consider (*Hoard v. Rhodes*, 1 Keen, 581) the case of a trustee coming without any reason to be discharged from the trust at the expense of the estate, and I did not think that the estate ought to bear the expense. These trustees do not seek to be discharged without reason, but in consequence of the acts of the tenant for life, and being of opinion that they are entitled to the relief sought by the bill, the only question is, who are to pay the costs. Are the trustees to pay them? Certainly not; neither ought the estate, under the circumstances, to be burthened with the costs; and I think they will be properly paid out of the interest of the tenant for life. *Coventry v. Coventry*, 1 Keen, 753.

NOTICES OF NEW BOOKS.

The Tithe Commutation Act: with Explanatory and Practical Notes, and an Introduction, containing a Practical Plan for the Voluntary Commutation of Tithes, founded upon the Provisions of the Act. And an Appendix, of the Forms settled by the Commissioners, and other Forms. By S. R. Bosanquet, Esq., Barrister at Law. London: A. Maxwell, 1837.

THE importance of the Tithe Acts of the last and previous session, renders it our duty to notice such well-considered views, as may be useful to those who in the discharge of their professional vocation, are required to carry the new law into effect. Amongst the Commentaries on these acts, we observe Mr. Bosanquet's work, the scope of which is stated in the above title; and we deem it proper to extract the following from his plan for the voluntary Commutation of Tithes, which contains much valuable information, and very judicious advice.

Where the land-owner or occupier is about

to increase his investments in the cultivation of his land, or where the price of produce is likely to rise, the interest of such parties in effecting a commutation is sufficiently obvious. But both these conditions must enter into the situation of all those lands which are about to be introduced to markets by rail-road communications, which is the greater part of the land in the kingdom. Again, the payment in lieu of tithe is likely in most instances to be reduced below the present annual composition, even at the very first payment. For, (supposing the permanent commutation made, to be of the same amount as that which would otherwise be paid in the next coming year under any present composition,) the payment in this next year (1837) will be less than the amount of such composition and commutation. For the average price of wheat in 1829 was 66s. 3d., and the average in the present year will probably be under 45s. The average price of wheat therefore in the seven years ending at Christmas, 1836, will be less than the average price of the seven years ending in 1835. And as one-third of the commutation will be turned into wheat at the higher average, and paid in the first year at the lower average, the payment in lieu of tithe will be reduced in the very first instance. At the above assumed average of 45s. for wheat in the present year, the reduction in the seven years' average for wheat will be about 5½ per cent.; and since one-third only of the amount of the rent-charge will vary according to the average price of wheat, the reduction upon the whole amount, on account of the fall in wheat alone, will be between 1½ and 1¾ per cent. in the first year. This operation will be general over the kingdom.

To the tithe-payer then the advantage will be obvious. What are the advantages to the tithe-receiver which can be so great as to counteract these apparent losses, and to render the benefits mutual?

In the first place, with regard to the distant prospects from the increased investment of capital in the land, he is relieved from all scrupulous regard for the interests of his successor, because he cannot defer the operation of the act beyond the period of two years; or improve the terms of the commutation by awaiting the advance of prices or such investments. And the small problematical increase during these two immediate years he will himself be glad to relinquish for the sake of the next mentioned advantages.

In the case of the clerical tithe-owner at least, the mere circumstance of the obnoxious mode of collection being done away, will be an attainment of the utmost moment, and of the most desirable kind;—and the clergy being left in peaceable and ungrudged possession and enjoyment of their settled incomes, and all ill-will and jealousies on account of the forced and burdensome exaction from the most unwilling portion of their flock being done away,—the harvest of their spiritual culture must probably be rendered greatly more abundant, and their labours more fruitful and encouraging.

But the extent of the advantage generally

to all classes of tithe-owners, both lay and clerical, from the establishment of a fixed and settled commutation, is best summed up in the following calculation and estimate. It was more than once affirmed, and never contradicted in the course of the debate, but on the contrary it was acknowledged to be a fair and unquestionable expectation, as necessarily resulting from the measure, that the value of tithes will be immediately raised from twenty years' purchase, which is its present amount, to thirty years' purchase. In fact, that from being one of the worst species of property, as tithes are known to be at present, they will become superior to every other kind of property whatsoever, in marketable value. So that, while the diminution in the receipts may perhaps be about 2½ or 3 per cent. in the first instance, the increase of those receipts will be towards 50 per cent. in permanent value. So great is likely to be the immediate and lasting benefit from the income derived from this species of property becoming "real instead of contingent."

There is no doubt but that a correspondent, though probably by no means an equal increase in value, will be produced by the commutation in the property of the tithe-payer. The uncertainty in the amount of the tithe which may be demanded, and the certainty that a considerable tax will be levied upon the produce of any fresh capital that may be invested upon the land, awakens the fears and increases the backwardness of a purchaser, and depresses the amount which he is ready to bestow upon the purchase, though not certainly to the extent of 50 per cent., which was the probable difference in value to the tithe-receiver. It is well acknowledged that the rent of land which is let tithe-free, is enhanced by a sum exceeding the average amount of the tithe generally paid upon land in the immediate neighbourhood. The mere advantage therefore of certainty and fixedness in the payment which is to be made in future, and that for ever, as a rent charge in lieu of tithe, will be of immediate and extensive consequence to all parties, though apparently of the most opposite interests; but especially to those who are desirous of enhancing the value of their property for the purpose of sale or settlement.

Where tithes are taken in kind, the advantages of a commutation are still more extensive and obvious. The expenses of collection are well acknowledged to be not less than 25 per cent. upon the value of the tithe taken according to this method: in some cases they are a great deal more. So that while the tithe-payer loses 100, the tithe-owner receives only 75 under this mode of collection, and 25 or more per cent. is entirely sunk and lost between them; which must be gained by one or the other party by means of a commutation—under which the one will receive exactly what the other pays, minus a very small percentage or payment for collection.

It is time now to consider the superior advantages of an immediate and Voluntary over a Compulsory adjustment, independent of the

general reasons and motives which have been already advanced.

The voluntary principle, and the length of time allowed for its operation, was a concession made to the earnest recommendations of those who undertook to guard most anxiously the interests of the parties who are immediately concerned in the working of this measure, both on the part of the tithe-payers and of the tithe-owners. And there can hardly be a doubt but that where, from the situation and circumstances and the dispositions of the different parties interested, a settlement can readily be effected upon the voluntary principle, considerable advantages must result from such a proceeding to both parties. In the first place, the increase in the value of property, both of the tithe-owner and tithe-receiver, in waiting for the operation of the compulsory system, will be delayed by all the period of time which shall elapse before that system shall be brought into operation. Besides which an actual temporary decrease in the value of property is likely to be operated during the same period, from the uncertainty which exists being extended so as to amount to one-fifth, both in the ascending and descending scale, or to 40 per cent. in the whole amount of uncertainty, from the latitude given to the Commissioners in awarding the rent-charge by the 38th section of the act.

But this is only a small part of the evils which may arise from the postponement of a commutation; and of a kind which will operate principally upon those only who may for particular reasons be desirous of enhancing the present value of their property. The powers given to the Commissioners by the act, though necessary, are of a very high and onerous kind; and to most persons, if they will but realize to themselves, in their own minds, the probable extent of the operation upon themselves under their own particular circumstances, will be found to be such, that it will appear to be well worth their while to endeavour, by means of a little present activity and arrangement, to endeavour to avert them.

By the 10th section of the Act, the commissioners are empowered to require the attendance of whomsoever they please, for the purpose of examination, and to compel them to answer all questions upon oath. They have power also to call for all accounts, books, contracts, writings, &c. which may relate to the matters before them;—and, by section 93, the penalty for refusing such attendance, and for withholding or destroying such accounts and papers, is prosecution for a misdemeanour. The accounts required must necessarily go back seven years from 1835; the finding and arranging and drawing up of which, for that period of time, must be in most cases a matter of no little time and trouble, and inconvenience. And the order for them will be peremptory. The necessary attendance, on particular times, and at particular places, to the neglect of all other calls and occupations, will be best appreciated by those who have at any time been subject to a similar requisition for their attendance as jurymen or witnesses. And the obligation to an-

answer, upon oath, all kinds of searching questions and curious inquiries, will be one of the processes under the compulsory system not the least desired and studied to be avoided. Yet all this inconvenience, and a great part of the trouble, may probably be obviated, by a calm and considered arrangement of the subject at leisure, and at the most convenient moments.

The expenses incurred also in proceeding according to the act, under the rules and orders of the Commissioners, will be certain, and must be considerable. The expense of a regular survey and valuation, (the whole of which is to be borne by the land-owners,) is well known to be enormous. And the drawing out of regular and detailed maps, as required by the 63rd and 64th sections, will also be attended with a very considerable expense. But matters of the same kind, both in respect of tithes and poor rates, have frequently been adjusted without any expense at all, by the means of voluntary and amicable arrangement.

THE PROPOSED NEW FEES IN THE COMMON LAW COURTS.

It appears that besides establishing a scale of fees to be paid on the several proceedings in the Common Law Courts, it is intended to promulgate certain *General Rules* relating to such fees.

Thus, the following existing fees are to be abolished:

All fees paid by prisoners.

The fee paid on taking an oath.

The fees on receiving and paying money into Court.

The poundage on money so paid in or taken out.

The declaration money.

The termages.

The fees on rules to declare, plead, reply, &c.

The fee of an officer attending his own court, or on a Judge, or a master, or for reading exhibits.

Fees for side bar rules.

Fees for references from the Courts.

Fees for the taxation of costs, or computing principal and interest.

Fees on filing affidavits, except of justification of bail, execution of articles of clerkship, or increase costs.

Besides the discontinuance of these fees, it is also intended to *reduce* or *modify* others. Thus,—

Second and subsequent writs are proposed to be half the amount of a primary writ.

A descending scale of fees on proceedings is to be formed, according to the amount of the sum sought to be recovered. This scale applying as well to writs for compelling appearance, as writs of inquiry, and writs of trial, and pleadings, trials, judgments, and executions.

Neither are any fees to be taken on any pleadings till the issue be joined, except on interlocutory judgments.

And there are to be no extra charges for *post terminum* on searches.

Such is the information we have at present collected, and we leave our practical readers to make such remarks as their experience may suggest. There is yet time, we presume, to bring any points that may be deemed necessary to the consideration of the Judges. We have not heard that any material objections have been raised to the proposed alterations, beyond what has been adverted to in some recent numbers of this work.

RESULT OF THE LAST EXAMINATION OF ATTORNEYS.

We are informed that *four* of the candidates who were examined on the 16th instant at the Law Society, did not obtain their certificates entitling them to be admitted as attorneys. The remainder of the number, namely, *ninety-nine* were duly passed. We learn, also, that no re-examination of those who did not pass was allowed, as has sometimes taken place, and consequently these persons must give notice before Hilary to be examined in Easter Term, if they require to come up again at that time. In one case, however, in Trinity Term last, the Court dispensed with the Term's notice, and authorised the Examiners to proceed without such notice. The applicant should state the loss or inconvenience he will sustain by the delay of giving the usual Term's notice.

We are glad to learn that the good effect of the Examination Rules is now become apparent. It seems that a large proportion of the candidates answered the questions satisfactorily in all the five branches of examination; and many of these were highly approved. A considerable number were also approved, and some of them highly, in four departments; whilst others passed with credit in three branches. It appears that the papers of such as had

not answered correctly a sufficient number of questions under three of the heads were subjected to further consideration; and after minutely weighing the merits of the whole of their examination, all were passed except the four already mentioned.

So far as we can learn, there is no settled intention to increase the difficulty of the questions; but it is not unreasonable to expect, that it being now nearly two years since the rules were promulgated, the Examiners will look for evidence of better preparation than was at first required. It seems that many of the young gentlemen from the country, who form the far larger part of the candidates, entertain the notion that if the business of the office in which they have served their articles be almost entirely conveyancing (as frequently happens), they are to be excused from answering questions relating to the remedies in the Courts of Law, Equity, &c. Now this latter kind of knowledge is really the proper business of an attorney, and it can scarcely be expected that a certificate (in the terms of it) of the party being "fit and capable to act as an Attorney of the said Courts," (meaning the Superior Courts) can be correctly signed, if a sufficient number of questions be not answered. Besides a knowledge of the Law of real Property, and the practice of Conveyancing, it seems essential therefore to answer satisfactorily with respect to the Law and Practice of some of the Courts.

It appears that the solitary individual who gave notice of Examination in Chancery, in preference to the ordinary course, changed his mind and did not attend. The Master in Chancery, with a sworn Clerk in Court and four Solicitors, were consequently saved the trouble of bestowing almost as much time in examining, or waiting during the examination of one applicant, as enables the Common Law Examiners to examine a hundred.

SELECTIONS FROM CORRESPONDENCE.

COMMON LAW FEES.

Sir,

Among the fees of the public offices which require amendment (now a table of fees is under consideration), are, I think, the fees paid to the clerk of the rules for office copy affida-

vits, viz. 8d. a folio: attorneys are only allowed 4d. a folio for copy declarations, &c.

AN OBSERVER.

[We understand that the fee for office copies is proposed to be 6d. per folio in actions above 20*l.*, and 4d. when under that sum. It should be provided (as in Chancery) that extracts may be taken. ED.]

"THE LAW'S DELAY."

To The Editor of The Legal Observer.

SIR,

Through the medium of your well-established Journal, I beg leave to call the attention of the leaders of the Profession to an evil that has existed for some time, and calls loudly for amendment. I allude to the *New Trial Paper* in the Court of Queen's Bench,—than which nothing can be more hard upon some of the suitors in her Majesty's Court.

No sooner has a verdict been returned for either party, (if there exist any quibble on the pleadings, or if the ingenuity of the pleader can by any means contrive to manufacture one), an *ex parte* application is made for a new trial. Then, should the counsel be able to convince the *one* Judge who hears him of the flaw he has so eagerly been seeking, or should there really be any reasonable excuse for bringing the parties again before a jury, a rule *nisi* is granted. Then what happens? Do proceedings immediately commence for effecting this object?—No. The cause gets into the *New Trial Paper*, and stands over for perhaps *two years*.

But the delay is not the only evil. Fees become due for every term intervening; and thus though the cause has once been decided, does expense follow expense, till the question comes again, after this long interval, to be argued. This delay may suit very well a plaintiff or defendant desirous of having time to settle his affairs, leave the country, or make some arrangement by which he may evade the heavy costs, should they eventually fall upon him; and of course his counsel will strain every nerve for a rule. Should this state of things be permitted? One party must be right; and why should he be so long without redress, and subjected to such an enormous additional outlay?

I could enlarge upon this subject, but will not take up more of your valuable space than is absolutely necessary. I do trust that some measures will shortly be adopted by the Judges of the Court of Queen's Bench to put a stop to this mischief, of which some instances actually amount to a denial of justice.

W. M. A.

SUPERIOR COURTS.

Lord Chancellor's Court.

RAILWAY ACT.—ILLEGAL AGREEMENT.—DEMURRER.—JURISDICTION.

*A private agreement was entered into by and between Lord H., a peer of parliament, and some of the directors of a projected railway, that Lord H., through whose lands the railway was to pass, should withdraw his opposition to the railway bill, and that the railway company, on the passing of the bill into a law, should pay him 5,000*l.*, as compensation for the injury his lands would sustain; and also that they would in the next session endeavour to procure a deviation from the original line. The bill passed. Lord H. brought an action at law for the 5,000*l.* The railway company filed a bill for an injunction to restrain the action, and for the delivering up of the agreement to be cancelled, as being against public policy, and illegal. Lord H. put in a demurrer. The Lord Chancellor, reversing the decision of the Master of the Rolls, allowed the demurrer, on the ground that the illegality of the agreement, if it was illegal, appeared on the face of it, and could be tried in the action at law.*

This case, on the hearing at the Rolls, is reported in 13 Leg. Obs. 491, and subsequently, and at greater length, in 1 Keen, 583. The facts are set forth sufficiently in either report. The Master of the Rolls overruled the demurrer, on the ground that the agreement was a fraud on the legislature, and that they would not pass the bill if the arrangement between the parties had been disclosed. His Lordship added to his judgment a strong intimation of his opinion that the agreement was illegal.

The defendant appealed, and the appeal was argued last June by the *Solicitor General*, Mr. Koe, and Mr. Bethell, for Lord Howden; and by Mr. Wigram and Mr. Wilbraham, in support of the decision of the Master of the Rolls. Among the cases referred to by them were the *Vauxhall Bridge Company v. Earl Spencer*; ^a *Edwards v. The Grand Junction Railway Company*; ^b *Harrington v. Du Châtel*; ^c *Bromley v. Holland*; ^d and *Jervis v. White*.^e

The Lord Chancellor delivered his judgment during the long vacation. His Lordship, after stating the allegations in the bill, the grounds of the demurrer, and of the decision of the Court below, observed, that to form an opinion of the propriety of that decision, it became necessary to look into the nature of the agreement. It was an agreement, in the event of the bill then contemplated passing, to pay to Lord Howden a certain sum as compensation for the damage which his property might sus-

tain by the railway. To make such arrangements before similar bills were proposed to parliament, was much in the usual course, and was the ground of many of the assents given to the passing of such bills. In that there was not any thing illegal. As to the bill proposed to be introduced as a substitute, the bill for the varied line, the case was much the same; and in that, taken by itself, there would be nothing illegal. But the illegality was said to consist in the provision that the proprietors of the first line should use their best endeavours to procure an act for another line, and so to defeat the plan proposed by the bill which they were seeking to have passed. The illegality must consist in this, that it operates as an inducement to persons applying to parliament for certain powers, not to use such powers, but to apply for other powers to carry the same object into effect, and that is contrary to public policy, and therefore illegal. But as this question of the illegality of the contract was likely to come into question in another Court, his Lordship would abstain from pursuing that part of the subject further.

The second objection to the bill was, that the illegality, if any, appearing on the face of the contract, was cognizable at law, and that equity therefore ought not to interfere. This must depend on authority. It was alleged that there was no instance of a Court of Equity having entertained jurisdiction to order an instrument to be cancelled, on the ground of an illegality which appeared on the face of the instrument itself. In *Colman v. Sarrel*,^f a case was referred to, in which Lord Thurlow is stated to have held, that where an instrument cannot be proceeded on at law, there was no ground to come into equity for relief. In *Frane v. Bolton*,^g Lord Thurlow allowed a demurrer to a bill to set aside a bond alleged to have been given *pro turpi causa*, after a verdict for the obligee, although the illegality of the consideration did not appear on the face of the bond. In *Gray v. Mathias*,^h a bill was filed to set aside a bond which appeared on the face of it to have been given *pro turpi causa*. The question of jurisdiction on that ground was argued, and the Court dismissed the bill with costs, not professing to decide on the question of jurisdiction, but doing what amounted to the same thing,—deciding that in such a case a Court of Equity ought not to interfere. This was a very distinct authority against the jurisdiction contended for by the plaintiffs. The cases upon the annuity acts, *Byne v. Vivian*,ⁱ *Byne v. Patten*,^k and *Bromley v. Holland*,^l do not appear to be applicable to the present case. No fact is stated in this bill impeaching the legality of the agreement, beyond what appears on the face of that instrument. If there should be a decree for the plaintiffs, it would be merely to deliver it up, without any consequential relief. The same questions that are raised by the bill may be decided by the action

^a 2 Madd. 356, and Jac. 64.

^b 1 Myl. & C. 650.

^c 1 Bro. C. C. 124.

^d 5 Ves. 610, and 7 Ves. 3.

^e 7 Ves. 413.

^f 3 Ves. 368.

^g 5 Ves. 294.

^h *Id.* 609.

ⁱ 1 Ves. 50.

^j 5 Ves. 604.

^k *Id.* 610.

at law ; why, then, should this Court assume to itself the decision of a mere legal question ? If the plaintiff at law should recover there, this Court would not interfere to postpone execution on its own opinion on the question of law. If the defendants at law obtain a verdict establishing the illegality of the agreement, their whole object in the suit in this Court will be obtained. If this Court were to entertain jurisdiction in this matter, it would still permit the action to proceed, and thereby afford the parties the speediest and cheapest mode of obtaining a decision of the question at law. In the absence of any decision in support of the jurisdiction, and seeing that no benefit could arise in this case from the Court's assuming the jurisdiction, his Lordship allowed the demurrer.

Simpson and others v. Lord Hovden, at Lincoln's Inn, June 17 and 23, and Aug. 30, 1837.

Vice Chancellor's Court.

USE OF A NAME.

A person purchasing the stock in trade and good will of a business, has no right to continue on the shop and merchandize the name of his vendor and predecessor, without his consent.

This was a motion to dissolve an injunction granted *ex parte*, restraining the defendant from using the name of the plaintiff, Mr. Joseph Hume, who formerly carried on the business of a chemist and druggist in Long Acre ; and being appointed to supply the household of his late Majesty, sold the stock in trade and good will of the business to the defendant, in the year 1833, upon certain terms stated in an agreement in writing between them. The plaintiff alleged in his bill, that in contravention of this agreement, the defendant, Mr. Beale, had continued to make use of his name in a manner not thereby authorized ; and he obtained the injunction either to restrain him altogether from using his name on labels, medicine bottles, and on the front of the shop ; or else to confine him to a qualified adoption of it, by some additional expression, which would show that the business formerly belonged to Mr. Hume, and that the defendant was merely his successor. The affidavits of the defendant in support of the motion to dissolve the injunction, stated that he had not made an improper use of the plaintiff's name, or such a use as would subject the plaintiff to any liability ; nor could it be said that he had libelled it in any way, but as it was inscribed on a great number of bottles, and was also the designation by which many medicines, such as "Hume's Dinner Pills," and "Hume's Marking Ink," were identified, and which were purchased as a portion of the stock by the defendant, he submitted that he was entitled to continue this harmless use of it.

Mr. Jacob and Mr. Keen, in support of the motion, argued, that, generally speaking, the

law gave a man an exclusive property in his own name, but that no court of law or equity would interfere to prevent the innocent use of it by another, in circumstances like those of this case. Unless the use of the name had a libellous tendency, or involved the owner in pecuniary liability, it could not be held that he made a case for the interference of the Court. Names were frequently used in trade in a most improper and disagreeable way to the owner ; but so long as the reputation, credit, and liability of the party were unprejudiced, there was no damage done, and therefore no law to prevent the use of it. Here bills, and all pecuniary and mercantile transactions, were in the defendant's sole name ; and it was not even suggested that the plaintiff had sustained any injury by the use which had been made of his.

Mr. Knight Bruce, and Mr. Parker, appeared on behalf of Mr. Hume to sustain the injunction, which, they said, was never intended to be applied for, or granted to restrain the use of Mr. Hume's name altogether, but only as its terms in the alternative fully expressed, to restrain the general and unqualified use of it, and to oblige the defendant to associate some expression with it, which would inform the public that Mr. Hume had no longer any interest in the concern, and that Mr. Beale was merely his successor. That announcement might be made in any mode which the defendant might think proper to adopt. Indeed the agreement between the parties had sanctioned the use of the plaintiff's name in this qualified form, which Mr. Beale had a right to publish to the world. But here the question was, whether the defendant had not done a great deal more ;—whether he had not violated the agreement, and committed an unauthorized and illegal act, by the general use of Mr. Hume's name, which might subject him to legal consequences and liabilities. The manner in which the name was inscribed on the front of the shop, and on the labels and advertisements of the defendant, with the addition of the known fact of Mr. Hume's residing in the neighbourhood, would be held as a tacit acknowledgement to the public, that he was jointly interested in, and responsible for what was done in the concern, and was liable to any engagements that might be entered into with it. This point had more than once arisen in a case in which the retiring partner in a banking establishment had permitted his name to remain before the public in conjunction with the continuing members of the firm, and the question how far he must be considered to have sanctioned the use of his name, so as to render him liable in an action of debt, was considered one of the very first importance. The present case rested rather upon the agreement and the correspondence, than upon the point of law ; and the inference to be drawn from them was, that the defendant had been always aware of the wishes, as well as the rights of Mr. Hume ; and that the latter had consented only to the qualified use of his name.

The Vice Chancellor said it was a case, under

all the circumstances, in which he should certainly continue the injunction. It did not appear that when the original agreement was made, there was any stipulation that the defendant should be at liberty to use the plaintiff's name at all. But even if there had been such a stipulation, the plaintiff possessed the right at any time to require the defendant not so to use his name as to represent to the world that he was in any way interested in the business, which the defendant was solely carrying on for his own benefit. It did not appear that the plaintiff had done any one act which went to show that he ever intended to abandon that which was his right at law. Then with reference to a circular issued by the defendant, with the plaintiff's knowledge, and on which much stress had been laid by the defendant's counsel, the document was so imperfect that no certain construction could be put upon it, and therefore his Honor thought it was no detriment to the plaintiff's case, that he had taken no notice of it. The correspondence certainly went to show that the defendant was aware through the medium of his friends what it was that the plaintiff wished to be done with regard to the use of his name; and it also went to show that at that time the defendant knew the extent of the plaintiff's legal right. His Honor could not help thinking that persons might be induced to avail themselves of the representation made by the defendant in the use he had made of the plaintiff's name, that the business was carried on between them, and that they might insist that it rendered the plaintiff liable as well as the defendant. The plaintiff had certainly a right to be protected from what might be the consequences of the defendant's unauthorized act, and therefore the injunction must be continued.

Hume v. Beule, at Westminster, Nov. 3 & 4, 1837.

Rolls.

PRACTICE.—INJUNCTION.—LACHES.

A party asking an injunction ex parte, is bound to apply soon after he discovers the injury against which he seeks protection, otherwise he must give notice of his application.

Mr. *Spurrier* applied for an injunction to restrain the defendant from selling an oil for the hair, under the name of "the Medicated Mexican Balm." The plaintiff's affidavit stated that he had purchased the recipe for that preparation, which he called after his own name, "Perry's Medicated Mexican Balm;" and he discovered last August that the defendant was selling a compound under that designation. Having become aware of the infringement of his right in the long vacation, he could not come to the Court earlier without considerable expense.

Lord *Langdale*, M. R.—As the plaintiff had chosen to wait so long without applying for protection, he should now give notice to the defendant of the application. The Court would

not, after so long a lapse of time, and so much negligence, grant an injunction *ex parte*.

Perry v. Clark, at Westminster, Nov. 7, 1837.

Queen's Bench.

[Before the Four Judges.]

MASTER AND SERVANT.

If a party hired for a year, subject to being dismissed at three months' notice, is dismissed in the middle of a quarter, his remedy, if he has any on the common assumpsit for work and labour, must not be attempted to be enforced by action till after the expiration of the quarter.

Assumpsit for a year's salary on a contract between master and servant. The declaration stated that the defendant was a surgeon, and that in consideration that the plaintiff would go into his service on the 1st of June, 1835, as an assistant, the defendant undertook to employ him for a year; that the plaintiff did go into his service on the day mentioned, and was willing to remain in the service, but that the defendant discharged him from the same. There were also the common counts for work and labour. Pleas—1. Non assumpsit; 2. that the defendant did not discharge the plaintiff; and lastly, payment of 4*l.* into Court, and plea that the plaintiff did not sustain greater damage than the sum of 4*l.* The cause was tried before Mr. Justice *Gaselee*, at the spring assizes for Norfolk, in 1836, when it appeared that the plaintiff had received his salary up to the end of August, 1835, but was dismissed the service of the defendant, on the 29th of the following month. A verdict was given for the defendant; the jury finding that there was a special hiring with three months' notice. A rule had been obtained to set aside this verdict, and to enter a verdict for the plaintiff.

Mr. *Kelly* shewed cause.—The contract alleged was an absolute contract for a year's service; the contract proved was one which was subject to three months' notice. The statement and the proof therefore differed from each other; and the special count was consequently at an end. It is clear that the plaintiff cannot recover on the common count; or if under other circumstances he might have done so, he has in this instance been premature in commencing the action. The case relied on by the other side is *Gandall v. Pontegny*.^a There *A.* was employed by *B.* as a clerk, at a salary of 200*l.* per annum, payable quarterly. He was discharged in the middle of a quarter, and paid proportionally; he brought his action, and was held entitled to recover his salary for the remainder of the quarter, on the general count for work and labour. If that case is good law, it is not applicable in the present instance, for here was a special contract, on which the plaintiff could only recover by means of a special count. Now the plaintiff has failed upon

^a 1 Stark. 198, and 4 Camp. 375.

the special count, because of the variance between the allegation in that count, and the contract as proved. He must then resort to the count for work and labour. But he cannot do this as he has not performed any work and labour that is not more than satisfied by the money paid into Court. If the plaintiff seeks to recover on the common counts, he has one of two courses to pursue; either he may bring an action and recover damages for work and labour up to the end of the time during which he was actually employed; or he may wait till the end of the quarter, and then bring his action for the full amount of the quarter's salary. But he cannot recover on the common count for work and labour, where he has neither really performed the work, nor waited till the end of the quarter, in which it was to be performed. The *dictum* of Lord *Ellenborough*, in *Gandell v. Pontigny*,^b will be referred to on the other side. There, Lord *Ellenborough* said, "If the plaintiff has done work for any part of the quarter, it is done for the whole." But that *dictum* cannot be supported by reference to the authority; nor can it be justified upon principle; for an action to recover compensation for work and labour done and performed, when in fact it has not been done and performed, is in contradiction to common sense. The remedy is at least premature. *Ridgway v. The Hungerford Market Company*,^c is a decisive authority against the *dictum* of Lord *Ellenborough*. In that case it was held, that where a yearly servant is dismissed by his master before the year has expired, for a cause which in law is sufficient to justify such dismissal, he cannot recover a year's wages, even *pro rata*, for such a period as has elapsed prior to his dismissal.

Mr. *Gunning*, in support of the rule.—This case must be decided by the authority of *Gandell v. Pontigny*, which has never been over-ruled. In the report of that case, in *Campbell's Reports*, Lord *Ellenborough* is represented to have said,^d that the plaintiff "having served a part of the quarter, being willing to serve the residue, in contemplation of law may be considered to have served the whole." That case was afterwards recognised in *Collins v. Price*.^e There a child at school, for whom payment had been made quarterly, was sent home on account of illness four days after the quarter commenced, and did not return, and it was held that the master was entitled to the whole quarter's schooling, although there was no express contract for a quarter's notice or a quarter's pay. The declaration there was on the common *indebitatus* count, so that that case is a direct authority for the present on both grounds. It is clear from both these cases, that the party need not wait till the end of the quarter, or the year, before he brings his action; but may at once proceed to recover the salary which would be

due to him by the terms of the agreement. That was admitted in effect in *Hulle v. Heightman*,^f where the judgment of the Court proceeded entirely on the fact of there being an existing written contract, containing special provisions, so that the party was prevented from proceeding on the common *indebitatus* count.

Lord *Denman*, C. J.—The ground on which this rule was granted, was that furnished by the authority of the case of *Gandell v. Pontigny*. But for that case this Court would not have granted the rule. But in *Archard v. Horner*, Lord *Tenterden*, without actually overruling that case, expressed an opinion very unfavourable towards the principle on which it is supposed to proceed; and ruled that under a common count for wages, a party cannot recover for more than the time he has actually served. If, therefore, we were bound to make our choice between the two authorities, it seems to me, that the later case would be found to be the better reasoned; for if a person, after a dismissal, can be entitled to recover for work and labour which he has never performed, it would be most unjust. But this point does not arise in the case now before us, for the plaintiff here has chosen to bring his action before the quarter ended. The case before Lord *Ellenborough* does not necessarily justify such a proceeding, and I think that in this instance, for the time for which the plaintiff did perform work and labour he has been sufficiently paid, and that the action here, if it could be maintained at all, has at least been prematurely brought.

Mr. Justice *Patteson*.—If I was compelled to make a choice between the cases of *Gandell v. Pontigny* and *Archard v. Horner*, I should say that the latter was the better authority. The schoolmaster's case,^g has nothing to do with the matter. The *indebitatus* count there was adopted in an action brought after the quarter had actually elapsed. But the point whether the *indebitatus* count can be maintained where there has been a special agreement, does not arise here, for this action has been commenced too early. It is an action upon a supposed executed consideration, with an assumpsit for a prospective time. It is impossible for the plaintiff to get over that difficulty.

Mr. Justice *Williams*.—I am entirely of the same opinion. The declaration is for work and labour done and performed. How is it possible to say that this count can be maintained, in respect of work and labour that may be performed in a prospective period of time? As to the other point, I think, if called on to decide between *Gandell v. Pontigny*, and *Archard v. Horner*, that the latter must be preferred.

Mr. Justice *Coleridge*.—The other parts of the pleadings being disposed of, the case stands on the common assumpsit. Can the action be maintained on that count? *Gandell v. Pontigny* has been cited to shew that it can.

^b 1 Stark. 199, and 4 Camp. 376.

^c 1 Harr. & Woll. 244; 3 Ad. & El. 171.

^d 4 Camp. 376.

^e 5 Bing. 132.

^f 2 East, 145.

^g *Collins v. Price* 5 Bing. 132.

Now what is the result of that case? Why, that where a man is dismissed in the middle of a quarter, but is ready and willing to perform his work to the end of the quarter, it is the same in law as if he had actually performed it. The case certainly decides no more than that. So that taking that case to be perfectly unimpeachable, still it is clear that the party must wait till the end of the quarter before he brings his action upon this implied assumpsit, and therefore I should say, that even without touching that case, though I am far from being satisfied with it this rule must be discharged.

Rule discharged.—*Smith v. Hayward*, M. T. 1837. Q. B. F. J.

PROHIBITION.

This court will grant a rule for a prohibition to the Judicial Committee, sitting as the Court of Delegates, where it is clear that unless the decision of the committee is given in one particular way it must necessarily be wrong.

Mr. Cresswell moved for a prohibition to issue to the Judicial Committee of the Privy Council, and to the churchwardens of Kensington, to prevent them from further proceeding to enforce the payment of a church rate. A bill had been exhibited in the Ecclesiastical Court against Mr. Farmer, in order to enforce payment of a rate made in 1833, and entered on the books in the following form: "A rate or assessment made on the 20th of January 1833, by the churchwardens and overseers of the parish of Kensington, in vestry assembled, for and towards defraying and indemnifying the churchwardens, &c. against all expences touching the office of churchwarden from Lady-day 1833, to Lady-day 1834." Mr. Farmer objected to this rate, as in part retrospective, and also on the ground that it was unequal. Mr. Farmer put in an answer in the Ecclesiastical Court, and then exhibited fresh matter, which, by the practice of that court entitled him to an answer from the other side. He alleged that the rate was not equally assessed; that it was in part retrospective, and that by the accounts put in by the churchwardens, a portion of it appeared to have been actually expended between Lady-day 1833, and the day when it was made, and that several hundred pounds had been expended, even previously to that period, in the payment of debts contracted before the parties making the rate had become churchwardens. In their personal answer the churchwardens admitted the former and denied the latter part of the statement. When the case came before Dr. Lushington, in the Consistory Court, he thought the objection that the rate was retrospective was fatal to it, and he dismissed the bill. The officers appealed to the Arches Court, where the judgment of the Judge of the Consistory Court was reversed, and the rate declared good. Mr. Farmer then appealed to the Judicial Committee of the Privy Council, who, by the 3 & 4 W. 4, c. 41, had been substituted for the Court of Delegates, against this

decision. The appeal was lodged in vacation, but now, at the earliest possible period, the appellant came to this court to prohibit the Privy Council from proceeding in the case. At first it might be objected that a person who had himself taken the case before the Judicial Committee of the Privy Council could have no right to come to this court, and ask this court to prevent that committee from hearing the appeal; but in Rolle's Abridgement ^a such a proceeding was stated to be good; and that old authority and been acted on in the case of *Darby v. Cousins*.^b In that case it was held that a prohibition may be granted to a court of appeal, where it appears that that court has no jurisdiction over the subject-matter, even after it has remitted the suit to the court below and awarded costs against the appellant, and although the party applying for the prohibition was the party who had appealed to the court. [Mr. Justice Culeridge.—It was the same in all the cases of Mr. Ricketts.] It was so. The only remaining question is, whether the proceedings in the Ecclesiastical Court, together with the rate itself, shew that the rate ought not to have been imposed. The rate, on the very face of it, appears to be retrospective: it is therefore bad. In *Dutton v. Wilkinson*,^c prohibition was granted after a sentence to compel present churchwardens to make a rate to reimburse the late churchwardens; and the reason there was that the rate was bad for being retrospective. When the rate is bad on the face of it, this court will interpose; for then it will be manifest that unless the appeal is decided in a particular way, it must necessarily be wrongly decided. On that principle the court interfered in the case already cited. [Mr. Justice Culeridge.—How are we to know that the Ecclesiastical Court will not decide as we should do?] It must decide wrongly, except it decides in one particular way. This court will not wait till the wrong is done [Mr. Justice Culeridge.—You must be driven to argue that the Ecclesiastical Court has not jurisdiction, unless the rate is good upon the face of it.] That is so; but it should also be remembered that the suit here is to enforce the payment of the rate; not to try its validity. As the rate is bad on the face of it, and as the suit is to enforce payment of it, the jurisdiction of this court necessarily and immediately attaches. The validity or invalidity of any rate, the right to make which is a common law right, must be within the common law jurisdiction; and as the rule of the common law says that a retrospective rate is bad, and the validity of the rate must be decided on the rule of the common law, this court will interpose to prevent any other court from deciding in opposition to that rule.

Per Cur.—Rule granted. *Es parte Farmer*. M. T. 1837. Q. B. F. J.

^a 2 Roll. Abr. 319, Prohibition F. pl. 2.

^b 1 Term Rep. 552.

^c Cas. Temp. Hard. 381.

Queen's Bench Practice Court.

AFFIDAVIT OF JUSTIFICATION.

Bail cannot justify in respect of different property from that mentioned in the affidavit of justification, although it may be sufficient in amount.

The affidavit of one of these bail, which accompanied the notice of bail, according to the rule of T. T., 1 W. 4, s. 3,^a described his property as consisting of "furniture and effects, in and on his house and premises, at, &c., of the value, &c." On being opposed, the bail could not justify to the requisite amount on his furniture, but proved he had sufficient stock in trade on the premises mentioned in the affidavit.

Manuel, who opposed the bail, submitted that he could not justify for stock in trade, as coming under the term "effects" in the affidavit of justification, and that the cases of *Jackson's bail*,^b and *Hemming v. Blake*,^c showed, that if this bail was allowed, the Court would order the defendant to pay the costs of the opposition.

Fish, *contra*, submitted, that the stock in trade came under the description of effects, and even if it did not, that the defendant was not entitled to be paid the costs of opposition, as the rule of Trinity Term, 1 W. 4, s. 3, only ordered that the plaintiff should pay the costs of opposition when there was an affidavit in the form mentioned, and the bail were allowed. He submitted also, that the practice was altered since the decision of the cases referred to.

Coleridge, J.—I think that stock in trade cannot be considered to come under the term "effects." Nor is this case within the rule of Trinity Term, 1 W. 4. The bail has failed to justify according to the affidavit which accompanied the notice of bail; therefore they may be rejected, and the plaintiff must pay the costs of justification. But the bail is admitted, *ex gratia*, to justify on other property, and that I think may be done on the condition of the defendant paying the costs of the opposition. The bail, in making the affidavit, takes on himself to say that his property is as specified in the affidavit. Now, suppose he abandoned that property, and justified on property of a totally different description, the plaintiff, in that case, would clearly be misled in making opposition to the bail. So also here the plaintiff was misled in his opposition. The two cases cited are exactly in point, and I shall decide on them.

Bail allowed; the defendant to pay the costs of opposition.—*Delwarte's bail*. Q. B. P. C. M. T. 1837.

Exchequer.

PRIVILEGE OF OFFICER OF THE COURT.

Where an officer of the Court of Exchequer was sued in the Court of Chancery as executor with others, and he served the plaintiff with a writ of privilege, the Court refused to set aside the writ, on the ground that it did not operate as an injunction or supersede the necessity of pleading the privilege.

Simpkinson moved that a writ of privilege, sued out in this case, might be set aside. It appeared that a bill was filed in Chancery against Mr. Thompson and others, executors and trustees under the will of a deceased person, and Mr. Thompson being one of the side clerks in the King's Remembrancer's Office, sued out the writ in question, and served a copy of it on the plaintiff. It was now contended, in support of the motion, that it was doubtful whether the privilege of an officer of the Court was available in Chancery. In Viner's Abridgment, tit. Privilege, 524, p. 26, it was said, "The Lord Chancellor Egerton declared that no Exchequer man is privileged against a *subpoena* of this Court, and several pleas by officers there as register, receiver, &c. have been overruled." At all events, the writ applied only to cases where the officer was sued alone, and in his individual capacity. In *Fanham v. Fanham*, 1 Vernon, 246, two of the defendants being officers of the Exchequer, pleaded the privileges of the Exchequer, and the plea was overruled, because there was a third defendant who had no right of privilege. *Powle's case*, Dyer, 377; *Molyneux v. Cook*, Vent. 298; *Townsend v. Duppa*, Stra. 610; *Pratt v. Salt*, cited Bac. Ab. tit. Priv. 533; *Roberts v. Muson*, 1 Taunt. 245; and *Ramsbottom v. Hescourt*, 4 M. & S. 585; all went to establish the law, that privilege could not be used where the party claiming was sued jointly with others, who had no privilege; and if this were not the law, this inconsistency would follow, that if the other person happened to be an officer of the Court of Chancery, there would be no means of suing at all. Besides, to entitle a person to this privilege, he must be sued in his personal, and not his representative character. An objection to the writ also was, that the bill was filed and the *subpoena* served when this Court was not sitting. The form of the writ of privilege was, that the officers of the Exchequer should not be impleaded in any other Court, "so long as that Court should be open."

Charles Cooper, in support of the writ.—So long as the privilege existed, it must be supported, and it was not for the Court, but for the legislature, to remove it. It must be admitted that the privilege had not been allowed in certain cases where the officers were sued jointly with others, but the reason for that always was, that the party could not have the same remedy in the Court where the privilege was claimed. In Chancery, though there was an equity as well as a common law jurisdiction, yet if the case required the decision of a jury, the party could not have the complete remedy he desired. Chief Baron Gilbert, in his treatise on Civil Actions in the Common Pleas, p. 209, after saying that the particular privilege of the officers of each Court was,

^a 1 D. P. C. 103.

^b 1 D. P. C. 172.

^c 1 D. P. C. 179.

not to be impleaded; elsewhere went on, "But this is to be understood, when the plaintiff can have the same remedy against the officer in his own Court, as in that where he sues him; for if money be attached in an attorney's hands by foreign attachment in the Sheriff's Court in London, he shall not have his privilege, because in this case the plaintiff would be remediless, for the foreign attachment is by particular custom of London, and does not lie at common law; so that if an attorney should have his privilege, the plaintiff would be without his redress. So, if a writ of entry or other real action be brought against an attorney of the King's Bench, he cannot plead his privilege; because, if this should be allowed, the plaintiff would have a right without remedy, for the King's Bench hath not cognizance of real actions. So if an attorney of the Common Pleas be sued in an appeal, he shall not have his privilege, for his own Court hath not cognizance of this action, and by this protection he should go unpunished. There could be no case in the Exchequer in which the party suing could not have an equal remedy in that Court as in any other, either of law or equity. In Burton's Practices in the Exchequer Office of Pleas, vol. 1, p. 45, there were many instances collected, where the privilege had been allowed, though the person claiming it had been joined with others. The plaintiff, however, was premature in making this application. The writ was not addressed to the plaintiff, but to the Lord Chancellor; and unless Mr. Thompson pleaded the privilege, the writ was a nullity. Supposing Mr. Thompson to have been arrested, the sheriff would not be justified in discharging him on his merely producing the writ. *Crosby v. Shaw*, 2 W. Black. 1084. The question as to how far he was entitled to avail himself of the privilege, would not arise until it was pleaded. *Snee v. Humphreys*, 1 Wils. 306. The only effect which the suing out of the writ had, was to give notice that he was an officer of the Court of Exchequer, and was enjoying the privilege. There was a distinction between the writ of privilege and an injunction of privilege.

Simpkinson contended, in reply, that the writ operated as an injunction of privilege.

Lord Abinger, C. B., was of opinion, that there was no ground for this application. The writ was not an injunction, but was merely a testification that the party had a general privilege, and it was a mistake to suppose that the writ could be used for the purpose of intimidation in this case. The suing out of the writ did not remove the necessity of pleading the privilege, but it was only evidence in support of the plea. The Court was asked to set aside the writ, because the privilege could not apply to this case; but why should it be set aside? because the party tried to make that use of it which the law did not permit. As an attempt had been made to use the writ for the purpose of deceiving the plaintiff, the application must be set aside without costs.

Application discharged. — *In re Robert Thompson*, T. T. 1837. Excheq.

LAW BILLS IN PARLIAMENT.

NOTICES have already been given in the House of Commons for leave to introduce various Bills relating to the Law. They may be arranged as follows:—

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to children of tender age. 14th Dec. Mr. Serjt. Talfourd.

To amend the Law of Copyright. 14th Dec. Mr. Serjeant Talfourd.

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. 28th Nov. Mr. Mackinnon.

To facilitate the recovery of possession of Tenements, after due determination of the Tenancy. 28th Nov. Mr. Aglionby.

To extend the recovery of debts in the Sheriffs' Courts to sums under 50*l*.

Captain Pechell.

This motion, by leave, was withdrawn on the 21st November.

To amend the Law of Coverture.

Captain Pechell.

This motion by leave was also withdrawn.

For the Protection of Licenced Victuallers; to relieve them from the liability of making good the value of articles brought by guests into hotels, inns, &c., without the same being placed under the actual care of the keepers thereof. Captain Pechell.

This motion came on the 21st Nov.

For the motion, 32; Against it, 97.

To enable Recorders of certain Boroughs to hold a Court for the recovery of Small Debts. 14th Feb. Colonel Seale.

To make better Provision for collecting and distributing the Estates of persons found Bankrupt under Commissions and Fiats directed to Country Commissioners. 5th Dec. Solicitor General.

LAWS OF PROPERTY.

To improve the tenure of Copyhold and Customary Lands. 4th Dec. Att. Gen.

To alter and amend the Law relating to the Mortgages of ships and vessels. 5th Dec.

Mr. G. F. Young.

To enable Tenants for Life of Estates in Ireland to make improvements in their Estates, and to charge the inheritance with a portion of the monies expended in such improvements. 7th Dec.

Mr. Lynch.

To enable Tenants for Life, and Mortgagees in possession of Lands in Ireland to grant Leases, and to enable Tenants for Life of Lands in Ireland to make exchange, and for giving a summary partition in all cases as to Lands in Ireland. 7th Dec.

Mr. Lynch.

To enable married women, with the consent of their husbands, to pass their interests in Chattels Personal. 12 Dec.

Mr. Lynch.

To amend the 13 G. 3, for the better cultivation, improvement, and regulation of the Common Arable fields, Wastes and Commons of Pasture in this kingdom. 12 Dec.

Lord Worsley.

To amend the 6 & 7 W. 4, for facilitating the inclosure of open and arable fields in England and Wales. 12 Dec.

Lord Worsley.

CRIMINAL LAW.

To abolish Grand Juries. 28 Nov.

Mr. Pryme.

To authorize the summary conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs, and Chairmen of Quarter Sessions, to reserve points of Law in Criminal Cases, for the opinions of the Judges. 12th Feb.

Sir E. Wilmot.

That certain offences to which the punishment of Death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel. 14 Dec.

Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes Magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime. 28 Nov.

Mr. Barneby.

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intitled "an Act to Amend the Representation of the People of England and Wales. 8Feb. Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the Law for the trial of Controverted Elections, or returns of Members to serve in Parliament. Mr. Buller.

[This Bill has been brought in and now stands for second reading.]

RESOLUTIONS OF THE HOUSE RELATING TO PRIVATE BILLS.

That this House will not receive any Petition for Private Bills after Friday the 16th day of February next.

That no Private Bill be read the First time after Monday the 26th March next.

That this House will not receive any Report of such Private Bill after Monday the 11th day of June next.

COMMON LAW SITTINGS.

Exchequer of Pleas.

After Michaelmas Term, 1837.

MIDDLESEX.

Monday .. Nov. 27	Common Juries.
Tuesday .. 28	Revenue and Common Juries.
Wednesday .. 29	Common Juries.
Thursday .. 30	
Friday .. Dec. 1	
Saturday .. 2	Special and Common Juries.
Monday .. 4	
Tuesday .. 5	

LONDON.

Tuesday .. Nov. 28	The Court will be adjourned.
Wednesday, Dec. 6	
Thursday .. 7	Common Juries.
Friday .. 8	
Saturday .. 9	
Monday .. 11	Special and Common Juries.
Tuesday .. 12	
Wednesday .. 13	
Thursday .. 14	Common Juries.

Should any Middlesex Causes remain untied on Tuesday the 5th of December, the Court will return to Middlesex after the London Causes are disposed of.

THE EDITOR'S LETTER BOX.

We still continue to receive several queries, composed of mere statements of facts, and requiring to know the law. One correspondent is very angry at his letter not being inserted. We have repeatedly stated, that we are willing to admit communications containing discussions of useful and disputed points; but we cannot undertake the duty of counsel or special pleaders in answering cases. We would fain please every body; but as this is impossible, we must be guided by the wishes of the majority.

A correspondent at Exeter, who approves of the publication of the questions at the recent examination, is informed that his suggestion as to the works in which answers may be found to questions, has been anticipated in the Second Edition of the *Articled Clerks' Manual*, in which he will find all the questions of the five preceding Terms, with many others, and references to authorities. This plan will be continued.

We are much obliged to a correspondent at Hull, relating to the *Legal Almanac*, and shall avail ourselves of his information in the next Edition. We wish other legal friends would favour us in like manner.

In the list which we gave of the *Members of the Profession in Parliament*, (Vol. 14, p. 298,) we omitted the name of Mr. George Darby, of the Home Circuit, who was returned at the head of the poll for East Sussex. This, we believe, was the only omission.

The Legal Observer.

MONTHLY RECORD FOR NOVEMBER, 1837.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

MR. J. W. SMITH'S INTRODUCTORY LECTURE AT THE INCORPORATED LAW SOCIETY.

MR. SMITH commenced his course of Lectures on Common Law on the 10th instant. The introductory lecture attracted considerable attention; and we proceed to state such parts of it as are suited to our limits, and which will doubtless be acceptable to our readers. The lecturer commenced by noticing the generally uninteresting nature of the branch of legal learning which he had selected, but which he should endeavour to enliven, by not merely directing the attention of his hearers to a dry catalogue of practical rules, but striving to point out the reasons upon which they depend—the objects they are intended to accomplish—their connexion with each other—their origin, and the improvements they have at various times received. After some other remarks, he proceeded to describe the origin and history of the Courts in which the *practice* was adopted, which would form the subject of his lectures.

The practice of the Courts, he said, historically considered, has gone through three distinct stages of existence, in each of which it has appeared under a very distinct aspect. In early times it was simplicity itself; framed to supply the wants of a semi-barbarous people, its forms were few, and easy, and intelligible. The plaintiff purchased his own writ, which in those days fully set forth the nature of his complaint, and commanded the defendant to come into Court upon a certain day and answer it. On that day the defendant accordingly appeared in person. The plaintiff's advocate stated his complaint *viâ voce*; the defendants answered and pleaded to it in the same manner. If either party relied upon a point of law, it was forthwith stated, argued, and decided. If the dispute was one of fact, issue was forthwith joined, and transcribed on parchment by the officer, who sat at the feet of the judges, listening and taking down the proceedings. The judges immediately commanded the sheriff to empanel a jury to try this issue, naming the day of trial. When that day ar-

rived, the jury and the parties were in attendance, the cause was tried, and, after a brief interval, judgment and execution followed.

Such was the early state of practice: but when times had changed, and the manners of the people were less primitive, these very simple forms became inapplicable. The defendant found it inconvenient to appear in person, and a seasonable alteration in the law enabled him to substitute his attorney. The business of the Courts increased, so that the judges could no longer afford time to hear the pleadings stated *viâ voce*. The practice therefore was changed, they were committed to writing, filed in the office of the Court, or delivered between the parties. Fictions of law were introduced, for the purpose of adapting the rules observed by a rude uncultivated people to the exigencies of civilized life. The forms of action, contrived to meet those injuries only which occur in the infancy of society, were found inapplicable to cases which now arose, and were only to be rendered applicable by a fiction. Legal fictions multiplied as society progressed. The man whose goods were unjustly converted was obliged to state that he casually lost and that the defendant found them. A plaintiff suing on a bond in the Queen's Bench, issued a writ stating that the defendant had committed trespass. In the Common Pleas, a plaintiff wishing to enforce a promissory note, commenced his action by a process which charged the defendant with breaking his close. In one Court, the declaration stated the defendant, who was living quietly at home, to be in the custody of the marshal of the Marshalsea. In another, the plaintiff, though not owing a farthing in the world, described himself to be a debtor to his Sovereign Lord the King. Fictitious persons, as well as fictitious states of facts, were introduced. The plaintiff gave as pledges of prosecution, those substantial personages John Doe and Richard Roe; and the defendant was stated to have been summoned by John Denn and Richard Fenn. Fictitious continuances were entered upon the record to account for delays occasioned by far different causes. And, to crown all, as it was obvious that these fictions, if allowed to be contradicted, would never have accomplished the ends aimed at, a

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maxim was introduced, that legal fictions were not traversable, the effect of which was to establish as unquestionably true in law, those statements which were most unquestionably false in fact. In short, the forms of practice had become so complicated and so unintelligible, that one of the ablest statesmen of our day declared that he had endeavoured, with the best of help, to understand them, but found it was impossible for any person who would not submit to a tedious course of professional study, to do so. Such is the second stage in the history of the practice of our superior Courts. From the simplicity of a barbarous age, it gradually sank into the complexity of interminable fiction, invented for the purpose of adapting the usages of an uncivilized, to the wants of a civilized community.

Intricate and impolitic as such a system was, it was, nevertheless, not till very lately that any attempt was made to simplify it. In the year 1828, however, a commission, comprising some of the ablest lawyers then at the bar, was appointed to enquire into the state of the common law. To the recommendation of these commissioners, we are indebted for most of the improvements which have since been made in practice: and, so great have these improvements been, that they have rendered the entire system comparatively easy and intelligible. Among other things, the jurisdictions in England and Wales have been consolidated; the Court of Exchequer Chamber rendered a convenient tribunal of appeal from all the Courts; the terms fixed; the Court of Common Pleas opened to all barristers; that of the Exchequer to all attorneys; proceedings allowed to go on in vacations, instead of being restrained to certain periods of the year, or continued after those periods by a fiction; the examination of witnesses abroad provided for, without an expensive application to the Court of Chancery; the law of pleading re-modelled, and placed upon a better and less expensive footing; the vexatious state of the law respecting variances, by which a party having all the merits on his side, was sometimes baffled through a mere slip of his pleader, has been amended; the law of costs improved, and rendered much more consonant with justice than formerly: and an immense number of minor alterations have been made, all tending to save expense and to simplify and expedite the administration of justice. Perhaps the most important change of all has been the substitution of a simple and intelligible process for the old and intricate forms by which actions were commenced. In a word, a new state of things has been brought about; and the practice of the Superior Courts is now in its third stage,—remote, indeed, from the extreme simplicity of olden times, but almost equally remote from the extreme complexity and inconvenience with which it might, but a few years ago, have been justly reproached.

To the delineation of this system, as it now exists, the present course will be devoted. But, before describing the system itself, it will be right to touch upon the nature, origin, and

constitution of the tribunals by which it is administered:—the three Superior Courts of common law at Westminster.

In the infancy of a nation, causes of every sort are tried, justice is in every case administered, by one and the same tribunal. The same judge tries the criminal, and the question of property, administers strict law, and qualifies its strictness when advisable by equity. It is not till civilization has spread, till property has become more abundant, rights more complicated, that the division of labour begins, and the administration of justice is partitioned out among different tribunals. Accordingly, in England, as in other countries, there was originally, under our early Norman monarchs, but one supreme court of justice, which was called the *Curia Regis*, or more frequently the *Aula Regis*, or King's Hall, from the place in which it usually held its sittings.

Of this Court, the Sovereign himself was the supreme judge, assisted by the Grand Justiciary of England, who, in his absence, acted as his deputy, and by the other principal officers of state. Figure to yourselves a court of justice assembled in Westminster Hall for the trial of all matters, whether criminal or civil. Imagine the King presiding over it in person; the Grand Justiciary on his right hand, the Constable of England on his left, to counsel him in questions turning on the law of arms and chivalry—for even these questions were discussed before the *Aula Regis*;—the Chancellor, then always a Bishop, clad in his episcopal robes, and the inferior Judges and Barons seated in the order of their precedence. Imagine this, and you will have a just idea of the aspect of the *Aula Regis* under the earliest of our Norman princes. But you are not to suppose that this Court was a stationary one. The monarch in those times frequently made the tour of his dominions: and one of his chief objects in doing so was, to afford all his subjects the opportunity of applying to his Court for justice. It is true, that the whole business of the kingdom was not, and could not have been, there transacted. The labours of the Supreme Court were lightened by the Sheriff's County Court and Tourn, and by the Leets and Courts Baron existing in the different manors throughout England. In these, many causes, even of importance, and all petty causes, were decided; for it was thought beneath the dignity of the King's Court to take cognizance of any dispute, the subject of which was of less value than forty shillings,—a considerable sum in those days,—and hence the practice which even now obtains in the Superior Courts, which represent the *Aula Regis*, of staying proceedings in an action, when it appears, from the plaintiff's own shewing, that his demand is less than forty shillings, and the cause is cognizable by an inferior Court. However, though these local tribunals had, in many cases, a jurisdiction concurrent with that of the *Aula Regis*, still, so much more confidence was reposed by the people at large in the wisdom and integrity of the supreme tribunal, which was seldom animated by those local prejudices, or actuated

by those local interests, which were too apt to sway the courts of the lord, or even of the sheriff, that, in process of time, means were found out of reserving almost every matter of importance for the decision of the *Aula Regis*, and parties were even willing to pay a sum of money to the Crown for permission to sue there, which payments, as appears from the records of the Exchequer, constituted part of the royal revenue, and are the origin of the fines paid at this day upon all original writs issuing out of Chancery.

In consequence of the preference thus shewn by suitors for the *Aula Regis*, the business of that Court became so heavy, and frequently so much in arrear, that a numerous train of advocates and suitors were obliged to follow it about in its peregrinations from one end of the kingdom to the other. This was not only a great inconvenience to the suitors themselves, but a dreadful oppression to the inhabitants of the counties through which they passed; for in order to supply the wants of such a retinue it was found necessary to put in force the prerogatives of purveyance and pre-emption,—prerogatives justly detested, since they empowered the King's purveyors to seize on the provisions, vehicles and horses, in the districts through which his Court passed, paying for them at a low valuation, considerably under market price. So oppressive was this found, that the outcries of the subject against it, together with the inconvenience sustained by the suitors in following the Court about, occasioned the insertion of a clause in *Magna Charta*. "*Communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.*" This clause, enjoining that common pleas should no longer follow the King's Court, but be held in some fixed place, was complied with, by erecting the Court of Common Pleas at Westminster, and as the words "*Common Pleas*," used in contradistinction to "*Crown Pleas*," included all disputes by which the interests of the Crown were not affected, the consequence of this clause in *Magna Charta* was, that the proceedings, in almost all civil actions, instead of being carried on wherever the *Aula Regis* happened to be, were transacted in the Court of Common Pleas at Westminster. This alteration took place in the reign of King John, and may be looked on as the origin of our present system of judicature.

The establishment of the Common Pleas at Westminster, while it removed one grievance, created another, for though the suitors had no longer to travel about after the King's Court, yet they had to come from the most distant parts of England up to Westminster, a great hardship in times when roads were so bad and travelling so little understood. Accordingly, by the statute of Westminster the Second, passed in the 13th year of the reign of Edward the First, the parties, who, till that time, had been obliged to appear in person before the Court, (except in some cases of special favor) obtained the privilege of prosecuting and defending their suits by attorney: and, thus it was, that the profession of an attorney of the Courts at Westminster originated.

After the establishment of the Common Pleas at Westminster, the *Curia Regis* still continued to attend the king's person, and to decide causes in which the crown was concerned. But the great lawyers established themselves near Westminster, where they founded the Inns of Court, and devoted themselves to the more lucrative business transacted there. Edward the First, who was perhaps the ablest monarch ever seated on the British throne, perceiving this, and finding that the grievance of purveyance and pre-emption was still considerable, determined to re-model the entire system of judicature. The Court of Common Pleas, indeed, he left as he found it, in possession of the civil business of the kingdom. The Exchequer he entrusted with the exclusive management of revenue matters, while the King's Bench, which was the remnant of the *Aula Regis*, continued to possess, as it at this day does, the criminal jurisdiction of that ancient court, and also a superintending power over all the inferior tribunals in the kingdom, commanding them, by writ of *mandamus* to perform what the law requires,—by writ of *prohibition* to abstain from what it prohibits,—removing their proceedings into itself by *certiorari*,—and reviewing them by writ of error or false judgment. In this Court, the king himself frequently sat. Edward the First often presided there, and it has been distinguished by the presence of a monarch even so late as the seventeenth century. As it is the remnant of the *Aula Regis*, the sovereign may still order it to accompany his own person, a command which the clause in *Magna Charta* above cited prohibits him from imposing on the Common Pleas; and therefore it is that original writs returnable in the latter Court, are made returnable "*at Westminster: in the Queen's Bench*" "*before the Queen herself wheresoever she shall then be in England.*" Nay, on one occasion, Edward the First commanded the Court of King's Bench to follow him into Scotland, and it actually sat there for some time at Roxburgh.

However, it was found so much more convenient to hold the Queen's Bench in the same place as the Common Pleas and Exchequer, that, it also, has, for many centuries past, except during the plague and civil wars, been stationary at Westminster. And, though the Queen's Bench and Exchequer had, at first, as I explained, no jurisdiction over purely civil causes, those being all entrusted to the Common Pleas, yet, by a series of fictions, they contrived to draw all personal actions within their jurisdiction. For the Queen's Bench declared that a person in the custody of its marshal, was before it for every purpose; and, as actions of trespass were considered to be still within its jurisdiction, being of a criminal nature, and a fine payable to the crown by the defendant; the plaintiff was permitted to issue a writ charging the defendant with a trespass, which being then a cause for which a man might be arrested, he was taken and committed to the Marshalsea; and, being once there, the plaintiff might declare against him for any

cause of action. Afterwards, they carried the principle further, and held, that the defendant's appearance or putting in bail would answer the same purpose; for that, in those cases, though not in the real, he was in the constructive custody of the marshal. And, therefore, till a few years since, all writs issuing out of the Queen's Bench described the cause of action to be *trespass*, in bailable cases, mentioning the real ground afterwards in an *ac etiam* clause, as if it were merely subsidiary to the fictitious one; and every declaration by bill in the Queen's Bench stated the defendant to be in the custody of the marshal of the Marshalsea.

As to the Court of Exchequer, that tribunal adopted a simpler mode of extending its jurisdiction; for the plaintiff in his writ and declaration stated that he was "a debtor to the king," and less able to pay his debts by reason of the defendant's conduct: and this, though, in ninety-nine cases out of one hundred, a mere fiction, was not allowed to be contradicted, and was held to render the cause of action a matter affecting the revenue, so as to invest the Exchequer with a jurisdiction over it. Thus did the Court of Queen's Bench and Exchequer obtain a jurisdiction co-extensive with that of the Common Pleas in actions personal; a jurisdiction which the Uniformity of Process Act now recognizes and confirms, while it abolishes the fictions by which it was acquired.

Having thus sketched the history of the superior courts, the lecturer proceeded to make some remarks upon their present constitution. The first objects that engage attention while occupied on this part of the subject are "the judges," who, while seated *in banco*, during term-time constitute the Court; while sitting separately at chambers, act as branches of it. Stat. 1 W. 4, c. 70, s. 1, contains an enactment by which a single judge of each court is empowered to sit *in banco* apart from the rest, for the purpose of justifying bail, and deciding matters of practice. When this provision is acted upon, the judge sitting apart represents the entire Court, and is armed with the authority of the entire Court. In the Queen's Bench, a judge sits in the Bail Court every term by virtue of this enactment. In the other two Courts, the press of business not being so great, it has not yet been found necessary to have such constant recourse to it. But for some time past it has been usual for one of the Barons of the Exchequer to sit apart, on the last day of term, in the small Court of Exchequer chamber, for the same purposes for which the single Judge of the King's Bench sits daily in the Bail Court.

By virtue of their offices, the judges of each Court enjoyed, at common law, an almost unlimited power of regulating the practice of the tribunals to which they belong. This power they exercised by promulgating rules, in which they directed what course of practice should, for the future, be adopted; and, at common law, the judges of each Court used in this

manner to regulate their own practice, but had not power to interfere with that of the other two Courts, which is the reason of most of the discrepancies that exist between their respective practices. But of late the advantages of uniformity in practice has been so well recognised, that, in order to produce it the judges of all the three Courts, or a majority of them, including the three chiefs, are, by stat. 1 W. 4, c. 70, s. 11, invested with the power of making rules to regulate the practice of all the three in matters over which they have a common jurisdiction. Similar power is given them by the 14th section of the Uniformity of Process Act, with respect to matters which that act concerns. Rules of practice are now, therefore, promulgated for all the Courts, and by the authority of all of them: and several sets of rules, containing very important regulations, have been in this manner published—first, in Trinity Term, 1831; again, in Hilary and Easter, 1832; in Hilary Term, 1834; in Hilary vacation, 1834, and in Hilary and Easter Terms, 1836. By virtue of the authority given in the Uniformity of Process Act, rules were promulgated in Michaelmas, 1832, Hilary and Trinity, 1833, and Michaelmas, 1836. By stats. 3 & 4 W. 4, c. 42, s. 1, the judges were further empowered, during the next five years, to make rules, which, after being laid a certain time before parliament would become law, altering the practice of pleading, and the mode of making entries. In pursuance of this enactment an important set of rules was promulgated in Hilary Term, 1834. In that Term, indeed, the judges issued two sets of rules at one and the same time; one set relating to pleadings and entries, the other set to certain other branches of practice. But of these the former set only was made by virtue of 3 & 4 W. 4, c. 42, s. 1; the latter set was made by virtue of stat. 1 W. 4, c. 70, as stated by the Court, in *Rea v. Woollett*, 3 Dowl. 964. Lastly, the act passed last session for the Regulation of the Offices of the Courts, requires the judges to make certain rules. On this subject it is right to add, that though rules relating to matters of practice, over which all the three Courts have a common jurisdiction, are, since 11 G. 4, and 1 W. 4, c. 70, promulgated by the authority of all the three; still there are certain matters over which each of the three Courts has an exclusive jurisdiction; and if any rule were made for the purpose of altering the practice with regard to such matters, it would be made by the particular Court to which it related, by virtue of its common law authority. Thus the Common Pleas has an exclusive jurisdiction over the action of Dower; and, therefore, if a rule were made to regulate the practice in that action, it must be made by the Common Pleas alone, without the intervention of the other two Courts; and, for the same reason, when, in Trinity vacation, 1834, in consequence of the Fine and Recovery Act, rules of Court were laid down to regulate the practice under that act, those

rules were made by the Common Pleas alone, as affecting a matter within its exclusive jurisdiction.

The personages who next engage our attention, are the officers of the respective Courts. The most important of these are the "Masters," whose duties and emoluments will, after the 1st day of January, 1838, be regulated by an important statute passed last session, (stat. 1 Vict. c. 30.) This Act creates five principal officers, called "Masters," to transact the civil business of each Court. The gentlemen who are to hold these offices are named in a schedule to the act itself, and vacancies in their number will be filled up as they occur by the Lord Chief Justices or Chief Baron, with the exception of certain appointments, the patronage of which is vested in Mr. Rose. The Masters are to be appointed, like the Judges, during good behaviour; the clerks and messengers during pleasure. Their salaries are charged upon the fees of Court, and if those prove insufficient, upon the Consolidated Fund. They are to receive no gratuities, and they are prohibited from acting either as barristers or as attorneys.

The duties imposed on the Masters are numerous and important. They are, with the assistance of the clerks and messengers, to transact all the civil business of the three Courts, excepting that of a judicial character. They are to keep, and render quarterly to the Treasury, an account of their fees and disbursements: the fees themselves are to be regulated by a table, which is to be prepared before the 1st January, 1838, and to receive the sanction of the judges. All monies paid into Court to abide the event of any cause or otherwise, are to be paid into the Bank of England, to the account of certain funds entitled the Suitor's fund of the Queen's Bench, Common Pleas, and Exchequer; payments out of which funds are to be made to checks signed by two Masters.

The taxation of costs, which has hitherto been carried on in separate offices in each Court, is now to be performed in one office, for all the Courts; and each of the masters is to tax indiscriminately the costs incurred in the Courts to which he does not, as well as in those to which he does belong. This is to promote uniformity in the practice of taxation; and to further this object, the judges are required to issue rules for the purpose of establishing such uniformity.

The Barristers and Serjeants at Law, are also looked upon as members of the Courts; the latter peculiarly so in the Common Pleas. Until lately, indeed, the serjeants had an exclusive right of audience in that Court; and anciently, they were almost the only advocates in civil cases. So lucrative a profession tempted the cupidity of the ecclesiastics, although forbidden to interfere in secular pursuits; and the coif is said to have been invented to hide the tonsure of the priests, who assumed it. As to the barristers, they were anciently called "Apprentices to Law," and occupied a rank very inferior to that of the

serjeants: one of the first of them who attained great legal eminence, was the celebrated Edmund Plowden; and Sir Francis Bacon was the first King's Counsel under the degree of Serjeant. The right of the serjeants to practise exclusively in the Court of Common Pleas, was, on the 25th of April, 1834, abolished by a royal warrant, which, at the same time, conferred upon the serjeants then in actual practice, place and pre-audience next after Mr. Bulguy, the then junior King's Counsel.

The attorneys are also officers of the Superior Courts; and by a statute passed last session, 1 Vict. c. 56, s. 4, admission in one Court entitles the attorney so admitted to practise in the other two. Their names are regularly enrolled, and they enjoy peculiar privileges, and are subject to peculiar disabilities, arising out of their official character. They are privileged from arrest; an attorney has a right to have an action in which he is plaintiff, tried in Middlesex; and if he be admitted in one Court only, he has hitherto been entitled to sue and be sued in that Court; but it remains to be decided how far that privilege may be affected by stat. 1 Vict. c. 56, s. 4, which enables an attorney admitted in one Court, to practise in the others. There is, however, no doubt that he is exempt from offices which require personal service; such as those of sheriff and constable. On the other hand, an attorney is subject to certain disabilities. He is prohibited from practising while holding the office of undersheriff, clerk, or deputy clerk of the peace, or magistrate. The Courts, considering an attorney as their officer, exercise a superintendence over his professional transactions. Every attorney is obliged by statute to take out an annual certificate at the Stamp Office. If he practise without it, he is liable to a penalty, and cannot sue for the recovery of his fees: and if he continues this neglect for a year, his admission becomes void, and he is, in contemplation of law, no longer an attorney until re-admitted.

From what has been said it will be perceived that an attorney, in his professional capacity, occupies two distinct relations—towards his client, that of the legal adviser and representative: towards the Court, that of its officer. When retained by one of the parties to a cause, his duty towards his client may be expressed in few words; it is "to conduct the cause skillfully to its termination." 'To its termination,' because a suit or action is an entire thing, and having once embarked in it, he cannot, without just cause, relinquish his employment. Indeed, it was once held, that he could not withdraw himself at all; but was obliged to go on to the end, even though he might be out of pocket, and without any reasonable chance of repayment. This absurd doctrine is now however overruled, and it is settled, by the late cases of *Vansandru v. Brutene*, 9 Bingh. 402; *Rowson v. Earle*, 1 M. & M. 538; and *Hoby v. Buitt*, 3 B. & Ad. 350; that, for a reasonable cause, such as a deficiency of funds, he may, on giving reasonable notice to his client, refuse to proceed:

the case of *Fanshau v. Browne* is particularly deserving of attention on account of the elaborate judgment of the Lord Chief Justice *Tindal*. This doctrine, that an action is an entire thing, binds the client on his side, as well as the attorney, who cannot be changed without the leave of the Court or a Judge. And another consequence of the same doctrine is, that the statute of limitations does not begin to run against any part of the bill of costs until the termination of the action, a point which was decided in *Harris v. Osborne*, 4 Tyrwh. 448.

In the conduct of a suit, and indeed, in all other professional business, the attorney is bound to exercise *reasonable skill*: not that he is responsible for an error of judgment, for, as has often been said from the bench, he is liable only for *crassa negligentia*. See on this subject the able judgment in *Godfrey v. Dalton*, 6 Bingh. 460; and see *Kemp v. Burt*, 4 B. & Adol. 424. Still, he is bound to know the ordinary practical rules which govern business: thus, in the case of *Stannard v. Ullithorne*, 10 Bingh. 491, attorneys employed by a vendor to settle the assignment of a term, were held liable for allowing their client to execute an unusual covenant, without previously explaining its nature to him.

The sheriff, so far as the execution of process is entrusted to him, is an officer of the Superior Courts, who frequently exercise their power by ruling or attaching him. By stat. 3 & 4 W. 4, c. 42, s. 20, each sheriff is, for the greater convenience of business, obliged to have a deputy within a mile of the Inner Temple Hall. The appointment of sheriffs is now regulated by 3 & 4 W. 4 c. 99, and the fees of their officers by 1 Vict. c. 55. When the sheriff happens to be personally interested in a suit, the discharge of his ministerial functions devolves upon the coroner, and, if he be also interested, on persons chosen by the Court, and called *Elisors*. *Mayor of Norwich v. Gill*, 8 Bingh. 27.

Having thus sketched the History and Constitution of the three Superior Courts, it remains to say a few words of the periods at which they are held. Matters of law are disposed of by the Courts during term only. It is true, that the Judges, at their chambers, exercise an ancillary jurisdiction. But their orders are not acts of the Court, and, if disobeyed, can only be enforced by turning them into rules of Court, and then obtaining an attachment, which can only be had during term time. It is also true that great part of the vacation is occupied in the trial of causes at the sittings and assizes; but these trials are not supposed to take place before the Court, but before the individual Judge who tries them. The period during which the Court itself is active, is during term, and during term only.

The institution of the terms is very ancient. They appear to have originated in the respect which the Judges used, in early times, to pay to certain holy seasons of the year. Thus, they always adjourned at Christmas, Easter, and

Whitsuntide, deeming it improper to perform secular business during those festivals. Thus originated the spaces which intervene between Michaelmas and Hilary, Hilary and Easter, and Easter and Trinity, terms. As to the vacation between Trinity and Michaelmas, a space, during that period, was, from the earliest times, allowed, for the hay time and harvest. In course of time, it was found convenient to regulate the length of the periods devoted to business. This was done by several acts of parliament, and they are now fixed by 1 W. 4, c. 70, and 1 W. 4, sess. 2, c. 3, s. 2. In the same way originated the University terms, and even, perhaps, the holidays given, at some of the public schools, at Christmas, Easter, Whitsuntide, and Bartholomew-tide.

Until a very recent period all the proceedings in an action, except the trial, were supposed to take place during term. Writs were all tested and returnable in term: pleadings were entitled of a term. There could be no judgment except of a term, and, when signed, it related to the first day of that term. All this originated in the circumstance that anciently the proceedings used in reality all to take place while the Court was actually sitting, which was in term time only. Now, however, in consequence of several recent statutes, most of the steps in an action, except those which require the immediate intervention of the Court, may be taken during vacation. Still it is important to recollect the ancient system, for, wherever no statute has expressly intervened, it still remains. Thus, if a plaintiff obtain a verdict at the assizes or sittings, he formerly must have waited for its fruit till the next term; and so he must now, unless the judge will grant him speedy execution under stat. 1 W. 4, c. 7; for that act has not abolished the old rule, but only enabled the judge to dispense with it. So too, the principal statute altering the system does not apply to actions of replevin, the steps in which are consequently supposed to take place during term.

The lecturer then proceeded to state the course he intended to adopt in his future lectures; the next succeeding one being intended to relate to the summary jurisdiction which the Courts and their respective Judges exercise by motion and rule, summons and order.

EARLY ENGLISH LAWYERS.

IN the Life of Sir Edward Coke by Mr. C. W. Johnson, which was lately* noticed, there are several short but interesting memoirs of the contemporaries of Coke, which we think will be generally acceptable to our readers. Amongst them we observe the names of Noy, Prynne, Littleton, and Heath,

* Vol. 14, p. 464.

The memoirs are interspersed with several examples of the eloquence of these distinguished persons, but the subjects on which they spoke are not quite appropriate to these pages, and we must therefore omit them.

"Of William Noy, one of the most learned of Coke's contemporaries, history does not report in very favourable terms; for Noy openly deserted his party, and was bought by the smiles of royalty. He was not an exception to the general rule, that no one changes his party or deserts his friends, without having some cause for repentance. He was born in Cornwall in 1577, and by intense study at Oxford, and afterwards in Lincoln's Inn, became profoundly learned in the common law. In the parliaments of 1620 and 1623, Noy sat for the borough of Helstone, and for St. Ives in that which met in February 1625.

"In his representative character he sided with the patriots of the day,—energetically opposing the undue exercise of the King's prerogative, and voting with Coke, Elliot, and the others who were then making so able a stand against the King, for the privileges of parliament.

"In 1631, however, he accepted the place of Attorney General from Charles the First, and, henceforward, laboured in his service with a zeal which never relaxed. He became speedily very unpopular, and was supposed to have been the great author of ship-money, and of several other obnoxious attempts to raise money without the sanction of parliament.

"His exertions, in studying and speaking wore him out. He sought refuge at Tunbridge Wells, but died, soon after his arrival there, in August 1634. Coke survived him about a month.

"His friend Bishop Laud, who was a martyr to the same principles which Noy, in his latter days, advocated, when he heard of his death, made this remark in his diary: "I have lost a dear friend in him, and the church the greatest she had of his condition since she needed any such."

He left an extraordinary will: for, after bequeathing to his son Humphrey a hundred marks a-year out of his lands at Peyder in Cornwall, he says of the remainder, 'I leave it to my son Edward Noy, whom I make my executor, to be consumed and scattered about.'

"The sensation caused by his death betrayed the importance of his character. The King and clergy lamented his loss; the players and the innkeepers rejoiced, for Noy was the friend of neither.

"Wood describes him as a solid rational man; and though no great orator, yet a profound lawyer.^b

"Noy lived in days of anarchy, feverish national anxieties, and star-chamber severities; and, in consequence, his official duties obliged him to appear in several prosecutions, in which the court and the crown were alike disgraced.

In none did he appear in more lamentable colours, than in the case of the libeller, William Prynne; perhaps the most voluminous writer that this country ever has produced. His collected works in the library at Lincoln's Inn, of which society he was a member, in forty huge folios, demonstrate his intense enthusiasm and his unwearied industry. It is in fact recorded of Prynne, that he rarely let even his meals interfere with his writings, but that he every now and then in the course of the day eat a roll of bread, without losing the time in a regular dinner. It has been calculated, by one of his biographers, that he wrote a sheet a day, from his manhood to his death.

"Prynne was eminently impartial in his scurrilities; for he libelled in succession the King, the parliament, Oliver Cromwell, Charles the Second, and his parliament; by all of whom he was severely punished and imprisoned.

"It was found impossible, however, to silence him; for he wrote away, in prison, as happily, as if he had been in his chamber at Lincoln's Inn. It was in vain they removed him to the most distant castles; to Dunster, Carnarvon, Pendennis, the Isle of Guernsey,—his works still came forth, dated from those places, in inexhaustible profusion. He seemed to know something of everything;—divinity, church government, politics, natural history, poetry, topography, popery, Quakers, Jews, Coke's Institutes, parliamentary history, chronology, English history, the Tower records, and about two hundred other different heavily treated works, the very catalogue of which fills eleven folio columns.^c

"It was Noy who first elevated Prynne into public notice, by an ill-judged star chamber prosecution. Prynne, who was then a zealous puritan, had published a heavy work upon the immorality of stage players, a work remarkable for its coarseness, vulgarity, and length—for it was a huge volume of more than one thousand pages. This was thought to reflect indirectly upon the Queen, Henrietta Maria, who not only attended plays, but often performed in the court masques.

"This ponderous tome was highly applauded by his friends. A modern attorney general, so far from regarding it with anger, would have deemed it quite a sufficient punishment to Prynne's party for them to be obliged to read it; but Archbishop Laud, and the then attorney general, thought differently."

"Noy was the author of several law books, of which his reports are the best known among lawyers. But it is probable that these were never prepared by him for the press: and, consequently, they are not of much authority in the courts.

"A copy of the original edition, which the talented Hargreave had in his possession, contained the following manuscript note, which is worthy of notice, as showing the spirit of the age in which Noy died:—

"A simple collection of scraps of cases,

^b Athenæ, vol. i, p. 595.

^c Wood's Athenæ, vol. i, 439.

made by Serjeant Size, from Noy's loose papers, and imposed upon the world for the reports of that vile prerogative fellow Noy.^c”

Of Sir Edward Littleton, Mr. Johnson says, he was the last of those great lawyers, who, leaving the popular party, accepted office under the crown.

“He came of an honourable family, long distinguished among the lawyers of England, being descended from the celebrated Thomas Littleton, the author of *Tenures*, who was a Judge of the Court of Common Pleas in the reign of King Edward 4, and of whom Coke wrote a biographical sketch, annexed to his *First Institutes*.

“‘He left this life,’ says Coke, ‘in his great and good age, on the 23d of August, 1481; for it is observed for a special blessing of Almighty God, that few or none of that profession die without will, and without child.’

“His son Richard, to whom he dedicated his book of *Tenures*, was also an eminent lawyer.

“The father of Sir Edward Littleton was also bred to the law, being a Welsh Judge. In that office Sir Edward succeeded him, and was made recorder of London, and in 1634 Solicitor General.

“At the conference held on the 14th of April, between the two houses, on the liberty of the subject, Littleton learnedly seconded the opening address of Digges, in a speech,—imperfectly reported, but which thus commenced:—

“‘Your lordships have heard that the commons have taken into consideration the question of personal liberty, and, after a long debate, have upon a full search and clear understanding of all things pertinent to the question, declared unanimously that no freemen ought to be committed, or restrained in prison, by the command of the king, or privy council, for any other, unless some cause be expressed, or which, by law, he ought to be committed. And they have sent me, with others of their members, to represent unto your lordships the true grounds of their resolutions, and have charged me particularly,—leaving the reasons of laws and precedents for others, to give your lordships satisfaction, that this liberty is established and confirmed by the whole state, the king, the lords spiritual and temporal, and commons, by several acts of parliament, the authority whereof is so great, that it can receive no answer, save by interpretation or repeal by future statute.’”

“Notwithstanding this, and many other warm speeches in favour of the liberal side of the house of commons, and for the members of which he was often counsel, we have seen that he left his party, and was appointed the king's solicitor general.

“In 1640, he was made Chief Justice of the Court of Common Pleas; and immediately afterwards succeeded Lord Fordwich, as Lord

Keeper, at the same time being enrolled as a peer, by the title of Littleton of Monalow.

“As Lord Keeper, during the early part of the long parliament, Lord Littleton had a difficult and irksome post. He had to figure as the chief performer in many very lamentable scenes; and, after having for seven years assisted Charles to rule without a parliament, was now the agent for making concessions to almost every demand of the commons. Thus, on the 14th of February, 1641, he signified by commission from the king, his assent to the bill for removing the bishops from the house of lords; an act to which Charles was weak enough to assent, and Littleton to applaud. He thus addressed the house:—

“‘The second bill, much wished, and earnestly insisted on, is for taking away the votes of bishops out of the house of lords, and exempting them from other secular affairs; that so being reduced to the first and original institution, they may the better attend the gaining of souls to heaven, by their frequent preaching and other divine offices proper to their functions; a work much more excellent than their mingling in temporal business.’”

“This silly concession was only part of the farce in which the Republicans exhibited the prelates of England. They were clamoured, and mobbed out of the House, their estates seized, and their order abolished; and were then tried for treason, ordered to prison, and finally admitted to bail.

“Littleton kept his seat on the woolsack with much tenacity, as long as a chance remained of serving the crown; but in 1642, the king having withdrawn to York, the Lord Keeper previously dispatching the great seal before him, joined his master there, and adhered to him until death, with unshaken fidelity.

“This event happened three years afterwards: Littleton died at Oxford, on the 27th of August, 1645. It appears that he had even served his majesty in a military capacity; for at the time of his death, he was actually colonel of a regiment of foot. He was the last keeper of the great seals of England who served in the field.

“Littleton was the author of a volume of reports, and of several minor works.[†] His descendants still rank among the nobles of England.”

On the side of Charles 1, Sir Robert Heath stood almost alone on the arguments and debates relating to the King's prerogative.

“For the years this great and eloquent lawyer was the attorney-general of Charles 1, and in the period to which I have just alluded, he had to contend single-handed with the ablest lawyers on the popular side of the question;

^d Hargreave's *Coke on Littleton*, 54, A.

• *Parl. Hist.* vol. 7, p. 412.

[†] *Parl. Hist.* vol. 10, p. 289. This act was repealed by the 13th Charles 2, c. 2.

[‡] *Wood's Athenæ*, vol. 1, p. 83.

and it is no mean praise for any advocate, that on this great question of the right of the Crown to commit any one to prison, without assigning the reasons for the committal, he successfully withstood Digges, Littleton, Selden and Coke, who, we have already seen, eloquently and learnedly addressed the committee of Lords and Commons on behalf of the people of England.

"In this weighty affair, Heath on several occasions spoke shortly and learnedly, during the progress of the opening speeches of the four great commissioners; and on the 19th of April 1528, he replied on behalf of the crown, in a long address, remarkable for its eloquence and learning, in defence of a proposition long since exploded, as inconsistent with the liberty of the subject. * * *

"Sir Robert Heath was decidedly the most talented of the King's advocates. He was born at Eatonbridge in Kent, and became a member of the Inner Temple. In 1618, he was chosen by the citizens of London to be their recorder, on the death of his predecessor, the talented and facetious Richard Martin, who only held the office for a month. In 1620, he was appointed solicitor, and five years afterwards attorney-general, a situation he held with great talent and reputation, until he was, in 1631, made Chief Justice of the Court of Common Pleas.^c From this office, however, in 1634 on the 14th of September, the King discharged and removed him: he being accused, according to Wood, of certain mal-practices in the execution of his office.

"His crimes were evidently not of a very heavy nature; for at the time the king discharged him from his office, he gave him special leave to practise in the courts of Westminster, as Serjeant at law, which he actually did in the very court over which he had once presided.^f

"In 1641, on the death of Sir Wm. Jones, he succeeded him as a Judge of the Court of King's Bench,^g in which capacity attending the King to Oxford, he was on the 31st October 1643, promoted to be Chief Judge of the same court.^h

In the course of his tenure of the attorney-generalship. Heath had many very arduous cases on the part of the crown. He led in 1625 the impeachment of the Earl of Bristol. In 1628 he had to conduct the prosecution in the Court of Star Chamber, against Sir John Elliot, Denzil Holles, Selden, Sir John Hobart, and others for holding the speaker, Sir John Finch, in the chair, when the King had directed him to adjourn the House. This was a long and important case; many were the debates, motions, and arguments to which it gave rise, in all of which Heath shewed great judgment and zeal; and although opposed to Selden, Littleton, and some others of the most talented men of the age, demonstrated a nearly equal knowledge of the law. It was made a popular question, but clamour and abuse were employed in vain; the judges of the Court of King's Bench held the accused to bail, and on their refusal to find the required securities, committed them to prison. The question as to the non-jurisdiction of the court of King's Bench, in parliamentary cases, was ineffectually pleaded; the grossness of the outrage it was impossible to palliate. If a body of members could without punishment drag their speaker in or out of the chair, they might with equal impunity beat or murder him; and if the majority participated in the fray, they could not, according to the doctrine sought to be established, be punished at all.

"No attorney-general ever had so arduous a tenure of the office as Sir Robert Heath. He adhered to the king during all his struggles with the parliament, with the most unflinching loyalty; was made a privy councillor; and became very naturally an object of hatred to the Cromwell party.

"By that party he was excepted from those of the king's friends to whom they were willing to grant pardon, on their submission. And in consequence, when the cause of Charles grew daily more desperate, and he had no longer occasion to employ either a chief justice or a privy councillor, Heath withdrew to the continent, and died soon afterwards, at Caen in Normandy, in August 1649. The Commons sequestered his estates, but at the restoration, Charles the Second restored them to his son Edward Heath."

^c Cro. Jac. 607. Cro. Car. 13, 225.

^f Cro. Car. p. 37.

^g Cro. Car. 601.

^h Parl. Hist. vol. 13, p. 257.

^k Wood's Athenæ, vol. 1, p. 26.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1838.

QUEEN'S BENCH.

Clerks' Names and Residence.

Atkinson, John, 13, Wells Street, Cripplegate.
 Asker, Samuel Hurry, Norwich.

Bryan, Willoughby, South Moulton, Devon;
 5, Upper North Place, Gray's Inn Road;
 and 56, Amwell Street, Spa Fields.
 Burbury, Thomas Potter, Sheffield.

Brown, John Johnson, Kirkdale, near Liver-
 pool.
 Buchanan, Charles, Nuneaton.

Brockbank, John, the younger, Lancaster,
 and 50, Frederick Street, Gray's Inn Road.
 Borlase, Walter, 14, Liverpool Street, St. Pan-
 cras; Launceston, Cornwall; and 38, Castle
 Street, Holborn.

Benson, Joseph, 1, Henrietta Street, Covent
 Garden.

Bourne, Henry, Bowes, York, and Newcastle-
 upon-Tyne.

Barber, George, 4, Strahan Terrace; Bows-
 den, Northumberland; 8, Gloucester Street;
 and 9, Half-moon Crescent.

Bollard, James Richard, Colne, and Preston,
 Lancashire.

Bickerstaff, John, Preston; 17, Great Russell
 Street; and 36, Frederick Street, Gray's
 Inn Road.

Bernard, Henry, Wells, Somerset; 41, South-
 ampton Row; and 1, Heathcote Street,
 Mecklenburgh Square.

Bartrum, Thomas Comerford, 72, Old Broad
 Street.

Blackhurst, James, Preston.

Batten, John, the younger, Yeovil, Somerset;
 8, Millman Street, Bedford Row; and 10,
 Essex Street, Strand.

Clarke, Edward, Hyde, Chester, and 38, Lom-
 bard Street.

Crossley, Rowland, Halifax.

Cobbett, Richard Baverstock Brown, 5, King's
 Road, Bedford Row.

Crawley, Thomas William, 48, Lamb's Con-
 duit Street.

Cory, Edward James, Holsworthy, Devon,
 and 104, Brook Street, Lambeth.

Cull, George, the younger, Dorchester; 1,
 Judd Street, Brunswick Square; and 13,
 Great James Street, Bedford Row.

Danby, John William, 2, New Boswell Court.
 Lincoln's Inn, and Spilsby, Lincoln.

Dunning, Simon, 4, Henrietta Street, Bruns-
 wick Square.

Doyle, Edward, 56, Upper Charlotte Street,
 Fitzroy Square.

Dickenson, George Ireland, 24, Cannon
 Street.

To whom articulated, assigned, &c.

John Tindale, Huddersfield.
 James Chase, Norwich; assigned to Alfred
 Barnard, Norwich.
 John Gilbert Pearse, Southmolton.

Daniel Winter, Burbury, Warwick; assigned
 to Samuel Younge, Sheffield.
 Richard Finlow, Liverpool.

George Greenway, Attleborough Hall, War-
 wick; assigned to James Williams Bu-
 chanan, Nuneaton.
 Thomas Rawsthorne, Lancaster.

John King Lethbridge, Launceston; assigned
 to Charles Gurney, Launceston.

Robert Gamlen, Gray's Inn.

Christopher Rymer, Wolsingham, Durham.

John Lambert, Alnwick.

John Bollard, Colne; assigned to James Rob-
 ertshaw, Colne; assigned to Robert Ascroft,
 Preston.

Robert Bickerstaff, Preston.

Benjamin Hope, Wells.

Thomas Bartrum, 72, Old Broad Street.

William Blackhurst, Preston.

John Batten, Yeovil.

Samuel Chorlton, Hyde.

David Crossley, Bradford; assigned to George
 Edwards, Halifax.

Edward Chamberlain Faithfull, 5, King's Road.

George Abraham Crawley, late of Salisbury
 Square; now of Whitehall Place.

Charles Kingdon, Holsworthy.

Thomas Coombs, Dorchester.

Langley Brackenbury, Spilsby; assigned to
 Jackson Gunnis, Spilsby.

Charles Millett, Chicklade.

Francis Blake, 6, King's Road, Bedford Row.

Charles Mann, late of 24, Cannon Street.

Clerks' Names and Residence.

Druitt, James, Wimborne Minster; 6, Southampton Buildings; and 109, Guildford Street.

Douglass, Adye, Southampton.

Espin, John, 3, Elm Court, Temple.

Edve, Francis Walrond, 27, New Millman Street, and 18, Old Millman Street.

Fernell, William Burgoyne, Sheffield, York, and 14, Cecil Street, Strand.

Fenton, Joseph, Sheffield.

Fearon, Samuel, 4, Canonbury Square, Islington, and 22, Henrietta Street, Brunswick Square.

Foulger, Charles, 133, Ratcliffe Highway.

Flower, John, East Retford.

Fosbrooke, Thomas, 22, New North Street, Red Lion Square, and 14, John Street, Bedford Row.

Griffiths, Joseph Crane, Welshpool, Montgomery; 28, Stamford Street; and 2, Bennett Street, Blackfriars Road.

Gregg, Humphrey Archer, 1, King's Terrace North, Clerkenwell, and Kirby Lonsdale.

Greenstreet, Henry John, 2, River Street, Pentonville; Kimpton, Herts; and Brampton, Huntingdon.

Gibson, John Robinson, Waltham Abbey, and Greenstead Hall, near Chipping Ongar, Essex.

Guy, John, Hampton Wick.

Garland, John, Winchester; 1, Judd Street; and 13, Great James Street, Bedford Row.

Greves, John Edward Henry, Barford, Warwick.

Gleadall, Charles, the younger, Halifax, and Hauger Lane.

Grover, Montague, 6, Wells Street, Gray's Inn Road, and Cardiff, Glamorgan.

Gilpin, Edmund, Wedges Mills, near Walsall, and Birmingham.

Holthouse, Henry James, 13, Keppel Street, Russell Square.

Hewett, John Waller, 5, Southampton Street, Bloomsbury, and Southampton.

Humbert, George, 60, Margaret Street, Cavendish Square.

Hooper, George, 4, Mornington Place, Hampstead Road.

Hicks, Peter Edward, Northampton.

Harle, William, Newcastle-upon-Tyne.

Hussey, Edward Law, 33, Store Street, Bedford Square.

Hobbes, William James, Stratford-on-Avon; 4, East Street, Red Lion Square; and 16, Devonshire Street.

Hamilton, Arthur Richard, Stanley Grove, Chelsea, and 9, Buckingham Street, Adelphi.

To whom articulated, assigned, &c.

Henry Bowden, Wimborne Minster.

Edward Harrison, Southampton.

Charles Few, 2, Henrietta Street, Covent Garden.

Thomas Peregrine Turner, Old Millman Street.

Thomas Branson, Sheffield.

John Saldall, Sheffield; assigned to John Copeland, the younger, Sheffield.

John Coles Symes, 31, Fenchurch Street.

Richard Willey, Welclose Square.

Richard Hannam, East Retford; assigned to William Newton, East Retford.

Benjamin Frear, Derby.

John Davies Corrie, Welshpool.

William Preston, Kirby Lonsdale; assigned to William Romaine Gregg, Kirby Lonsdale.

William Smith, Hemel Hemstead, Herts.

Charles Richard Roberts, Billericay, Essex; assigned to Edmund Huntley, Billericay, Essex; assigned to Joseph Jessopp, Waltham Abbey, Essex.

Charles Addis, 10, Great Queen Street, Westminster.

Charles Seagrim, City of Winchester.

George Matthew Paget Kitchin, Barford.

Michael Stocks, Halifax.

John Thomas Grover, 50, Bedford Row;

Francis James Ridsdale, 5, Gray's Inn Sq.

Henry Moore Griffiths, Birmingham.

Charles Bell, Bedford Row; assigned to John Duncan, Liverpool Street.

Thomas Andrews Minchin, Gosport; assigned to Charles Ewens Deacon, Southampton; assigned to John Usher, Southampton.

James Goren, South Moulton Street; assigned to John Allen, Carlisle Street, Soho; assigned to Henry Walker, Southampton Street, Bloomsbury.

Robert Taylor, 18, Featherstone Buildings, Holborn; assigned to Gustavus Thomas Taylor, 18, Featherstone Buildings, Holborn.

John Shearman, Bartlett's Buildings, Holborn; assigned to Richard Marriott Freeman, Northampton.

Thomas William Keenlyside, Newcastle-upon-Tyne.

George Law, Lincoln's Inn.

Robert Hiorne Hobbes, Stratford-on-Avon; assigned to Joseph Creswell, formerly of Redditch; now of Birmingham.

Edward Leigh Pemberton, late of Salisbury Square; now of Whitehall Place.

Hastie, Arthur, East Grinstead, Sussex.
 Holyoake, John, Droitwich.
 Hayes, Robert, Clement's Inn, and St. George's Terrace.

Jeffes, John, Harlston, Norfolk, and 9, Parade, Islington.

James, Joseph Green, Wolverhampton, and 23, Great Castle Street, Regent's Street.

Johnson, Henry, East India Buildings, Bishopsgate, Stanhope Terrace, Bayswater.

Lovell, Charles Henry, 45, Cumming Street, Pentonville.

Lyon, Thomas Headly, 7, Furnival's Inn; 8, Philpot Lane; and 14, Fish Street Hill.

Marshall, William, Claypath, near Durham.

Micklefield, Anthony Horrex Roger, 34, Frederick Street, Gray's Inn Road, and Stoke Ferry, Norfolk.

Maltby, John, 37, Gloucester Street, Queen Square.

Matthews, John, Swindon, Wilts; 11, Wilmot Street, Brunswick Square; and 9, Wells Street, Gray's Inn Road.

Morel, Charles Baptiste, Norwich, and 210, Piccadilly.

Millington, John, Carnarvon, and 43, Chancery Lane.

Nicholson, Edward, 14, Goulden Terrace, Pentonville, and Doncaster.

Nicholson, William, Warrington, and Manchester.

Nettleship, Richard Hutchinson, East Retford, Notts.

Norton, Henry Elland, Gray's Inn Square.

Ornsby, Henry William, 92, Great Russell Street, and 20, Foley Terrace, Islington.

Prendergast, John Dalrymple, Portugal Street, Montague Square, and Tokenhouse Yard.

Pearson, John, 26, Sidmouth Street, Regent's Square, and South Winfield, Derby.

Pickthall, William, 11, Wharton Street, Clerkenwell, and Kendal, Westmoreland.

Pritt, William, Liverpool.

Pinkney, Thomas Francis, 13, Henrietta Street, Covent Garden.

Parkin, Benjamin, the younger, 2, Henrietta Street, Brunswick Square, and Liverpool.

Pascoe, James, Penzance, Cornwall, and 10, Soley Terrace, Pentonville.

Roberts, James, 2, Lincoln's Inn Fields, and 6, Golden Terrace, Pentonville.

Richardson, George Rycroft, Blackheath; 6, Warwick Court, Holborn; and Guildford.

Rawlings, Benjamin William, 44, Jewin Street.

Radford, George Galloway, 31, Wakefield Street, St. Pancras, and Liverpool.

Sharp, William, the younger, Lancaster, and 18, Great Coram Street.

Senhouse, William Posenby, Cockermonth, Cumberland, and 30, Kenton Street, Brunswick Square.

Simpson, Samuel, Manchester.

Spike Edward, 15, Clifford's Inn.

Charles Nairn Hastie, sen., East Grinstead.

Thomas Gab Curtler, Droitwich.

Thomas Porrett Hayes, Bedford Row.

George Carthew, Harlston.

Horatio Barnett, Walsall; assigned to Thomas Moss Phillips, Wolverhampton; assigned to John Philpot, sen., 3, Southampton Street, Bloomsbury.

Lloyd Salisbury Baxendale, Great Winchester Street.

Charles Wells Lovell, 14, South Square, Gray's Inn.

Thomas Wortham, Royston.

Henry John Marshall, city of Durham.

Roger Micklefield, Stoke Ferry.

William Eaton Mousley, Derby.

Alfred Southby Crowdy, Swindon.

Richard James Hitchcock, Davies Street, Berkeley Square; assigned to William Foster, Norwich.

Robert Williams, Carnarvon.

Frederick Fisher, Doncaster.

Peter Nicholson, Warrington; assigned to Alexander Kay, Manchester.

Thomas Bigsby, East Retford.

Henry Norton, Gray's Inn Square.

George Ornsby, city of Durham; assigned to Joseph Blower, 61, Lincoln's Inn Fields.

Edward Smith, London.

Peter Bainbrigge Le Hunt, Derby; assigned to John Moss, Derby.

John Poole, Gill Head, Cartmel, Lancaster; assigned to Thomas Wardle, Kendal.

William Hinde, Liverpool.

George Truwhitt, Cook's Court, Carey Street.

Thomas Avison, Liverpool.

George Dennis John, Penzance.

James Chapman, Manchester.

John Bate Cardale, 2, Bedford Row; assigned to John Allen Sibthorpe, Guildford.

James Fawcett, 44, Jewin Street.

Thomas Avison, the younger, Liverpool.

William Sharp, Lancaster.

William Rudd, Cockermonth; assigned to Richard Baynes Armstrong, Staple Inn.

John Thompson, Manchester; assigned to Alexander Butler Rowley, Manchester.

William Spike, 4, Elm Court; now of 15, Clifford's Inn.

Clerks' Names and Residence.

Stockley, Richard, 15, Fish Street Hill, and 61, Cambridge Terrace, Edgware Road.

Smith, Francis John, 39, Doughty Street, Mecklenburgh Square.

Shutt, William Pargeter, Wolverhampton.

Stenton, Henry Cawdron, Southwell, Notts, and Norfolk Street, Strand.

Sandford, Folliott, 24, Cateaton Street; and 9, Chadwell Street, Pentonville.

Shaw, Benjamin, Dudley.

Street, Thomas Henry, Grove Hill, Camberwell.

Smith, Thomas, 20, Tavistock Street, Covent Garden, and 39, Sidmouth Street, Regent's Square.

Samler, Wellington, 15, Charter House Square.

Stone, Thomas, 3, Wellclose Square.

Shaw, Charles, 11, Terrace, Walworth.

Shawman, Joseph, Leeds.

Shapland, John Terrell, Crediton; 7, Great Ryder Street, Saint James's.

Thairwall, Frederick, Richmond, York.

Turnley, Thomas Wesley, 36, Gracechurch Street, Ipswich, and Peasanhall, Suffolk.

Trappes, Richard, Blackburn, Lancaster; 8, Devonshire Street, Queen Square; and 15, Tavistock Place.

Thrupp, John, 6, Spanish Place, Manchester Square.

Tilman, William Ireby, Devonport.

Tagart, Charles Fortescue, 2, New Ormond Street, Queen Square.

Wright, Joseph Hornsby, Woolwich Common, Kent.

Waterworth, Thomas, Wakefield.

Willcox, Michael Ayres, Honiton, Devon; 11, Gloucester Street, Bloomsbury.

West, William, 30, Fortias Terrace, Kentish Town.

Williams, Charles Reynolds, 8, Cambridge Terrace, Regent's Park.

Were, Nicholas, Plymouth.

Watts, James Hooke, Plymouth; 2, Jewin Street, Criddlegate; and 2, Millman Street, Bedford Row.

Young, Robert, Battle, Sussex; 24, Great Queen Street, Lincoln's Inn Fields; and Tewksbury, Gloucester.

Zachary, Francis Daniel, 46, Nelson Square, Blackfriars, and Lower Areley, Worcester.

To whom articulated, assigned, &c.

Joseph Smith, Coleman Street; assigned to J. B. Smedley, New Inn; assigned to Edwin Smith, Bridge Street, Blackfriars; assigned to Charles Elmes Parker, Princes Street, Spital Fields.

Richard Poole, Gray's Inn.

George Holyoake and G. Robinson, Wolverhampton; assigned to George Robinson, Wolverhampton.

George Hodgkinson Barrow, and Richard Bridgman Barrow, Southwell.

Charles Scott Stokes, 24, Cateaton Street; assigned to Nathaniel Hollingsworth, 24, Cateaton Street.

William Fellows, the younger, Dudley; assigned to Charles Twamley, Dudley.

Thomas Street, 1, Brabant Court, Philpot Lane.

Edward Nelson Alexander, Halifax; assigned to Josiah Smithson, Pontefract; assigned to Jonas Gregory, Clement's Inn.

Francis James Ridsdale, 5, Gray's Inn Square.

John Michael Morris, 7, Bank Chambers, Lothbury.

James Fuller Madox, 30, Clement's Lane.

Joseph Dunning, Leeds.

Poyntz, Charles Byne, South Molton; assigned to George Tanner, Crediton; assigned to Hull Terrell, 30, Basinghall Street.

James Brown Simpson, Richmond.

Joseph Turnley, Ironmonger Lane, Cheapside; Westerham, Kent; Ipswich and Peasanhall, Suffolk; assigned to John Evans, 53, Lincoln's Inn Fields.

Thomas Ainsworth, the younger, Blackburn; assigned to James Neville, Blackburn.

John Philpot, the younger, Southampton Street, Bloomsbury.

John Teage, Devonport.

Joseph Warner Brounley, Gray's Inn Square.

Alexander Mitchell, 4, New London Street, Crutched Friars.

Benjamin Dixon, Wakefield.

Robert Henry Aberdein, Honiton.

James Beaumont, 28, Golden Square; assigned to John Pike, 28, Golden Square.

Michael Clayton, 6, New Square, Lincoln's Inn.

John Edmonds, Plymouth; assigned to George Prideaux, Plymouth.

George Stone Baron, Plymouth.

George Williams, Tewksbury; now of Cheltenham.

John Bury, Bewdley.

Notices left at the Master's Office after the proper time. Ordered by the Judges at Chambers to be added to the List.

Banning, John Johnson, Liverpool.

Brooking, John, Brixham, Devon, and 57, Marchmont Street.

William Tristram Keightley, Liverpool.

Richard Walter Wolston, Brixham.

Clerks' Names and Residence.

Burnaby, Charles Sherard, Newark-upon-Trent, and 26, Great George Street.
 Busby, Charles Stanhope Burke, Reading.
 Clarke, John Callow, Upton-upon-Severn, and 39, Clarence Garden, Regent's Park.
 Farwell, Frederick Cooper, Totnes, Devon, and 31, Beaumont Street.
 Gartside, Henry, Oldham.

Moss, Edward, 49, Great Portland Street.
 Murray, Edward Jenner, 59, Chancery Lane, and Petworth.

Markham, Arthur Bayley, 21, Spencer Street.

Roberts, Richard, Bedford Row, and 15, Robert Street, Bedford Row.

Rutter, John, Shaftesbury, and 1, Red Lion Square.

Robinson, George Thomas, Portsmouth, and 10, Gower Place.

To whom articulated, assigned, &c.

Thomas Fowkes Andrew Burnaby, Newark-upon-Trent.

Jacob Boys, Brighton,
 John Clarke, Upton-upon-Severn.

George Farwell, Totnes.

Edmund Robert Harris, Preston; assigned to Edward Brown, Oldham.

George Faulkner, Bedford Row.

James Archibald Murray, 59, Chancery Lane; assigned to Charles Murray, Midhurst; afterwards of Petworth; re-assigned to said Jas. A. Murray.

George Hillyard King, Tokenhouse Yard; assigned to Thomas Fletcher Robinson, Tokenhouse Yard.

George Faulkner, Bedford Row.

John Rowland, Shaftesbury; assigned to William Hannen, Shaftesbury.

Charles Bettesworth Hellard, Portsmouth.

LIST OF NEW PUBLICATIONS.

The Ecclesiastical Legal Guide. No. 1. Price 1s. To be continued Monthly.

Bingham's New Cases in the Court of Common Pleas. Vol. 3, Part 5. Price 8s. 6d.

Law Magazine, or Journal of Jurisprudence. Part 38, Price 6s.

Dowling's King's Bench Practice Reports. Vol. 5, Part 5. Price 10s. 6d.

Life of Sir Edward Coke. By C. W. Johnson, Esq. 2 Vols. bds. Price 1l. 8s.

Hennell's Forms of Affidavits, Declarations, &c. &c. Second Edition. Price 12s. bds.

Sugden on Wills. Price 8s. bds.

Archbold's Bankrupt Law. Price 1l. 1s. bds.

Chitty and Hulme's Statutes. Vol. 2, in 2 Vols. Price 3l. 3s.

Woolrych's Treatise on Criminal Acts. Price 6s. bds.

Selwyn's Nisi Prius. 2 Vols. 9th Edition. Price 2l. 18s. bds.

Meeson and Welshy's Reports in the Court of Exchequer, and Exchequer Chamber. Vol. 2, Part 5. Price 7s.

Neville and Perry's Reports in the Court of King's Bench. Vol. 1, Part 5. Price 7s. 6d.

Falcon and Fitzherbert's Irish Controverted Election Cases. Price 5s.

Knapp and Ombler's Cases of Controverted Elections. Vol. 1, Part 3. Price 8s. 6d.

Adolphus and Ellis' Reports in the Court of King's Bench. Vol. 5, Part 2. Price 9s. 6d.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

November, 1837.

Charles Baker, Lincoln's Inn Fields.

John Mackenness Stevenson, Gray's Inn Square.

James Wallis Pycroft, Osinston, next Derby.

Augustus Walter Arnold, 31, Golden Square.

Henry Kingsford, Canterbury.

Charles Henry Trehern, Leadenhall Street.

William Pyne, Inner Temple Lane.

Joseph Hyatt, Shepton Mallett, Somerset.

MASTERS EXTRAORDINARY IN CHANCERY.

From Oct. 27 to Nov. 14, 1837, both inclusive, with dates when gazetted.

Pearless, William, East Grinstead, Sussex Oct. 27.

Purcell, James, Frodsham, Chester, Conveyancer. Nov. 14.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Oct. 27 to Nov. 14, 1837, both inclusive, with dates when gazetted.

Graham, William, and James Miller, Castle Street, Holborn, Attorneys. Oct. 27.
 Lee, Thomas Eyre, and Harry Hunt, Birmingham, Attorneys and Solicitors. Nov. 3.
 Carter, John, and Richard Dewes, Coventry, Attorneys and Solicitors. Nov. 3.
 Jones, Thomas, and Joseph Lamburne Smith, Leilbury, Hereford, Attorneys, Solicitors, and Conveyancers. Nov. 14.

BANKRUPTCIES SUPERSEDED.

From Oct. 27, to Nov. 14, 1837, both inclusive, with dates when gazetted.

Gregory, Charles, Luton, Bedford, Maltster. Nov. 10.
 Foulkes, Thomas, Bell Yard, Gracechurch Street, Victualler. Nov. 14.

BANKRUPTS.

From Oct. 27, to Nov. 14, 1837, both inclusive, with dates when gazetted.

Annelly, John, Saint Wolloos, Monmouth, Coal Merchant. *Protheroe & Co.*, Newport; *Platt & Co.*, New Boswell Court. Oct. 31.
 Aked, William, Castleashaw, Saddleworth, York, Cloth Manufacturer. *Lake & Waldron*, 33, Basinghall Street; or Messrs. *Battye & Clay*, Huddersfield. Nov. 10.
 Aked, James, Waters in Saddleworth, York, Cloth Manufacturer. *Lake & Waldron*, Basinghall Street; *Battye & Co.*, Huddersfield. Nov. 10.
 Burgess, John, Lowestoft, Suffolk, Cordwainer. *Clarke & Co.*, Lincoln's Inn Fields. *Beckwith & Co.*, Norwich. Nov. 3.
 Burkitt, Richard Scott, Sheffield, York, Draper. *Battye & Co.*, Chancery Lane; *Smith*, Sheffield. Nov. 7.
 Brunsdon, William, Cirencester, Gloucester, Ironmonger. *Hughes*, 10, Lincoln's Inn Fields, and Cirencester. Nov. 10.
 Bonella, Wm., Brunswick Street, Hackney Road, Cabinet Maker. *Graham*, Off. Ass.; *Williams*, Alfred Place, Bedford Square. Nov. 14.
 Biggs, James, Egham, Surrey, Coach Master. *Turgand*, Off. Ass.; *Bridger*, Finsbury Circus. Nov. 14.
 Bevan, Wm., Brecon, Maltster. *Bicknell & Co.*, Lincoln's Inn Fields; *Faughan & Co.*, Brecon. Nov. 14.
 Clapham, William, Strand, Victualler. *Goldmid*, Off. Ass.; *Nias*, Copthall Court. Oct. 27.
 Craddock, George, Store Street, Bedford Square, Chymist and Druggist. *Green*, Off. Ass.; *Wood & Co.*, Corbet Court, Gracechurch Street. Oct. 31.
 Colnaghi, Martin Henry Lewis Gaetano, Cockspur Street, Printseller. *Groom*, Off. Ass.; *Bebb*, 29, Great Marborough Street. Nov. 10.

Clark, John, Keppel Street, Bloomsbury, Dentist. *Gibson*, Off. Ass.; *Fiebler & Co.*, Duke Street, Grosvenor Square. Nov. 10.
 Dutton, Thomas, Stockport, Chester, Victualler. *Norris & Co.*, Bartlett's Buildings, Holborn; *Prescott*, Manchester. Nov. 7.
 Dumont, John Emilius, and Ferdinand Von Ellrodt, Liverpool, Merchants. *Chester*, Staple Inn; *Davenport*, Liverpool. Nov. 14.
 Davis, Samuel, Birmingham, Brace and Belt Manufacturer, and General Factor. *Richards & Co.*, Lincoln's Inn Fields; *Copper*, Birmingham. Nov. 14.
 Eburne, Mary, and William Hawthorne Eburne, Rathbone Place, Oxford Street, Coach Makers. *Lackington*, Off. Ass.; *Sanford*, Adelphi Terrace. Nov. 10.
 Freeman, William Edwards, Manchester, Mercer and Draper. *Sale*, Manchester; Messrs. *Baxter*, Lincoln's Inn Fields. Oct. 31.
 Giles, Thomas, Leeds, York, Joiner and Builder. *Battye & Co.*, Chancery Lane; *Naylor*, Leeds. Oct. 27.
 Gloyne, Henry, Wakefield, York, Grocer and Spirit Dealer. *Scholes & Co.*, Dewsbury; *Battye & Co.*, Chancery Lane. Nov. 7.
 Heywood, George Sandys, Exeter Street, Strand, Wine Merchant. *Gibson*, Off. Ass.; *Dangerfield*, Lincoln's Inn Fields; *Brinton*, Kidderminster. Oct. 27.
 Hutchinson, Robert, and Robert Hutchinson, jun., Minorities, London, Carriers and Leather Cutters. *Gibson*, Off. Ass.; *Laurance & Co.*, Bucklersbury. Nov. 3.
 Hutchinson, Wm. Goodwin, Lisle Street, Leicester Square, Currier and Leather Cutter. *Cannan*, Off. Ass.; *Laurance & Co.*, Bucklersbury. Nov. 14.
 Jay, Philip, Watford, Hertford, Linen Draper and Mercer. *Graham*, Off. Ass.; *Warne*, Leadenhall Street. Nov. 14.
 James, Wm., Buglawton, Chester, Silk Throwster and Silkman. *Pickford*, Chapel House, Congleton; *Hudson*, Bucklersbury. Nov. 10.
 King, John, Chewstoke, Somerset, Ochre Manufacturer. *Peters*, Bristol; *Jones*, Crosby Square. Nov. 14.
 Morrison, James, and William Stone, Harp Lane, Tower Street, London, Wine, Spirit, and Beer Merchants. *Johnson*, Off. Ass.; *Norton*, New Street, Bishopsgate. Oct. 31.
 Morgan, George, Birmingham, Warwick, Glass Manufacturer. *Sculthorpe*, South Square, Gray's Inn; *Weston*, Cannon Street, Birmingham. Nov. 10.
 Mills, John, Liverpool, Butcher and Tavern Keeper. *Adlington & Co.*, Bedford Row; *Pemington*, Liverpool. Nov. 14.
 Mole, William, Birmingham, Warwick, Brass Founder. *Colmore & Co.*, Birmingham; *Clarke & Co.*, 20, Lincoln's Inn Fields. Nov. 10.
 Mower, Robert, Shoreditch, Woollen Draper. *Turgand*, Off. Ass.; Messrs. *Sole*, Aldermanbury. Nov. 14.
 Nicholls, John, Malvern Wells, Worcester, Hotel Keeper. *Bedford*, 20, Calthorpe Street, London; *Bedford & Co.*, Worcester. Nov. 10.
 Oakley, Thos., Blandford Forum, Dorset, Printer, Stationer and Bookseller. *Cannan*, Off. Ass. Nov. 10.
 Prichard, Ambrose, Emscole, Warwick, Builder. *Ewington*, Leamington Priors; Messrs. *Rushworth*, Staple Inn. Oct. 27.

- Preston, Elizabeth, Nottingham, Commission Agent and Lace Manufacturer. *Capes & Co.*, Bedford Row; *Wadsworth*, Nottingham. Oct. 31.
- Pyefinch, John, Shrewsbury, Chemist and Druggist. *Burgoyne & Co.*, Oxford Street; *Edgerley*, Shrewsbury. Nov. 10.
- Pizzie, Thomas, Bath, Upholsterer. *Dax & Co.*, Lincoln's Inn Fields; *Drake*, Bath. Nov. 10.
- Revill, George, Blackman Street, Southwark, Linen Draper. *Johnson*, Off. Ass.; *Hooker*, Bartlett's Buildings. Oct. 27.
- Riley, Edward, Argyll Place, Regent Street, Tailor. *Tarquand*, Off. Ass.; *Hopwood & Co.*, Chancery Lane. Oct. 31.
- Richmond, George, Rinton, Sedgley, Stafford, Miller and Baker. *White & Co.*, Bedford Row; *Smith*, Walsall. Oct. 31.
- Russell, James, Tunbridge Place, New Road, Lodging-house Keeper. *Goldsmid*, Off. Ass.; *Sutton*, Bartlett's Buildings. Nov. 7.
- Reynolds, Jerry, Thornsea, Saddleworth, York, Woollen Manufacturer and Innkeeper. *Milne & Co.*, Temple; *Whitehead & Co.*, Oldham. Nov. 7.
- Roussac, Augustus Gabriel, Austin Friars, Merchant. *Green*, Off. Ass.; *Meggison & Co.*, Bedford Row. Nov. 14.
- Riddle, Wm., Lane End, Stafford, Draper. *Gibson*, Manchester; *Chisholme & Co.*, Lincoln's Inn Fields. Nov. 14.
- Rollason, Henry William, Birmingham, Glass Manufacturer. *Scutthorpe*, South Square, Gray's Inn; *Weston*, Birmingham. Nov. 14.
- Stevens, Mary Ann, and Ann Oldroyd, Bedford Square, Boarding and Lodging-house Keepers. *Green*, Off. Ass.; *Crowder & Co.*, Mansion-house Street. Oct. 27.
- Smith, John, Nottingham, Victualler and Brick Maker. *Fox & Co.*, Nottingham; *Willett & Co.*, Essex Street. Oct. 27.
- Slack, Robert, Heafield, Derby, Paper Manufacturer. *Bower & Co.*, Chancery Lane; *Ltargard & Co.*, Stockport. Oct. 27.
- Simpson, Samuel, and Thomas M'Kinstry Simpson, Ardee, Louth; and of Bailie Borough Mills, Cavan, Ireland, trading to England as Corn Dealers and Millers. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Oct. 31.
- Seals, John, Nottingham, Lace Manufacturer. *Cowlay*, Nottingham; *Johnson & Co.*, Temple. Oct. 31.
- Stuart, Sarah, Pall Mall, Milliner. *Green*, Off. Ass.; *Burt*, Lancaster Place, Strand. Nov. 7.
- Sparrow, James, Shutt End, Kingswinford, Stafford, Seedsman and Publican. *Richards & Co.*, Lincoln's Inn Fields; *Copper*, Birmingham. Nov. 14.
- Townshend, Thomas, Birmingham, Contractor for Railroad Works and Builder. *Chaplin*, Gray's Inn Square; *Spurrier & Co.*, Birmingham. Nov. 7.
- Twase, Thomas, Wellington, Somerset, Grocer and Linen Draper. *Rhodes & Co.*, Chancery Lane; *Drake*, Exeter. Nov. 7.
- Theobald, Thomas, Norwich, Bombasin and Camel Manufacturer. *Mills*, Hatton Garden; *Colman & Co.*, Norwich. Nov. 14.
- Vinton, James, and David Lawson, Brewer Street, Middlesex, Woollen Drapers. *Johnson*, Off. Ass. Nov. 10.
- Wall, Robert, Great Yarmouth, Norfolk, Linen Draper. *Hawkins & Co.*, New Boswell Court; *Tolker & Co.*, Great Yarmouth. Oct. 27.
- Wilkins, John, Newport, Monmouth, Corn Factor. *White & Co.*, Bedford Row; *Bevan & Co.*, Bristol. Oct. 31.
- Wilby, Henry, High Town, York, Card Maker. *Flower*, Bread Street, Cheapside; *Messrs. Carr*, Gomersal, near Leeds. Oct. 31.
- Wehnert, Nicholas, Leicester Square, Tailor and Draper. *Whitmore*, Off. Ass.; *Wilson*, Furnival's Inn. Nov. 3.
- Wright, Peter, Leeds, York, Grocer. *Woodhouse & Co.*, King's Bench Walk, Temple; *Stott*, Leeds. Nov. 3.

PRICES OF STOCKS.

Tuesday, November 21st, 1837.

Bank Stock, div. 8 per Cent.	-	212 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$
3 per Cent. reduced	- - - - -	92 $\frac{3}{4}$ a $\frac{1}{2}$
3 per Cent. Consols Annuities	- - - - -	93 $\frac{1}{2}$ a $\frac{1}{2}$
3 $\frac{1}{2}$ per Cent. Annuities—1818	- - - - -	100
3 per Cent. Annuities—1726	- - - - -	Nothing done.
3 $\frac{1}{2}$ per Cent. reduced Annuities	- - - - -	100 a $\frac{1}{2}$
New 3 $\frac{1}{2}$ per Cent. Annuities	- - - - -	101 $\frac{1}{2}$ a $\frac{1}{2}$
New 5 per Cent.	- - - - -	Nothing done.
Long Anns.—Expire 5th Jan. 1860	-	15 a 14 $\frac{1}{2}$
Annuities for 30 years—Expire 10th Oct. 1859.	- - - - -	Nothing done.
Annuities for 30 years—Expire 5th Jan. 1860.	- - - - -	Nothing done.
India Stock, div. 10 $\frac{1}{2}$ per Cent.	- - - - -	273
Ditto Bonds 4 per Cent.	- - - - -	30s. a 32s. pm.
South Sea Stock, div. 3 $\frac{1}{2}$ per Cent.	- - - - -	Nothing done.
Ditto Old Anns. div. 3 per Cent.	- - - - -	Nothing done.
Ditto New Anns. div. 3 per Cent.	- - - - -	Nothing done.
3 per Cent. Annuities—1751.	- - - - -	Nothing done.
Bank Stock for Acct.—Nov. 28.	- - - - -	Nothing done.
3 per Cent. Cons. for Acct.—Nov. 28	-	93 $\frac{1}{2}$ a $\frac{1}{2}$
Indian Stock for Acct.—Nov. 28	- - - - -	273
Exchequer Bills, 1000l.	- - - - -	43s. a 41s. pm.
Ditto 500l.	- - - - -	43s. a 41s. pm.
Ditto Small	- - - - -	41s. a 44s. pm.

The Legal Observer.

SATURDAY, DECEMBER 2, 1837.

— "Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.

HONAT.

THE PROGRESS OF LAW REFORM.

H^{ER} Majesty on opening her first Parliament declared that she was aware that the administration of justice was of the utmost importance, and therefore directed the particular attention of the Legislature to the measures for the improvement of the law which would be laid before it; and it would seem that we are to have a session of much importance to our profession. We shall therefore take the present opportunity of renewing our general notice of the measures which have been already brought in, or which may be expected.

The first legal debate of the session arose out of a motion of Captain Pechell, to bring in a bill to do away the present liability of innkeepers for the goods of their guests; which motion was lost by a large majority. The same gentleman also endeavoured to bring in two other bills—the one relating to coverture; the other to sheriffs' courts; both of which were postponed. The gallant Captain, however, nothing daunted, is going to renew the fight on two of his projected reforms. He has given a notice of a general bill to amend the law relating to licensed victuallers, and is resolved to persevere with his bill relating to sheriffs' courts. We doubt much whether under his pilotage he will carry either of his schemes safe into port. We are, however, far from wishing to discourage any independent member from endeavouring to remedy the real grievances arising from the present state of the law. We promise, therefore, to give both *bills* every attention, if they ever attain even that stage of maturity. The house was not better inclined towards Mr. Pryme's bill to abolish the law of grand juries, which was summarily disposed of on Tuesday last.

VOL. XV.—NO. 433.

The bill to abolish imprisonment for debt has been brought into the House of Lords by the Lord Chancellor. We have made some observations as to this measure in a subsequent part of this number.

Mr. Mackinnon has obtained leave to bring in a bill to amend the law relating to patents, to which we wish every success; and Mr. Aglionby has also proceeded thus far with a bill to facilitate the recovery of tenements, after due determination of the tenancy, which is also a useful measure.

Mr. Charles Buller has succeeded in bringing in a bill for amending the law relating to controverted elections, of which we give an analysis in another part of this number. The chief alterations^a which he proposes to effect are to reduce the number of the committee from eleven to five; to substitute challenging for striking out in forming the lists; and to authorize the speaker to appoint three permanent assessors, with a salary of 2000*l.* a-year each, to attend the committees, and give their opinion on all points of law arising out of the enquiry. These assessors are to be barristers of seven years standing, are not to be members of the House, and are not to have a vote. Another plan proposed by Mr. O'Connell was to send a statement of the disputed points in the case to a Judge of one of the Superior Courts, who should try the matter before a jury; but this plan has been for the present abandoned.

There are several bills of considerable importance of which notice has been given. Thus the Solicitor General proposes to bring in a bill to make better provision for collecting and distributing the estates of persons found bankrupt, under commissions and fiat directed to *country* commissioners. A

^a See a summary of the present system, *ante*, p. 1.

bill was brought in last session having this object, which we fully considered;^b but we conceive that this is not the bill which is to be renewed, or if so, that it has received very considerable alterations. We also call attention to the bill to enable recorders of certain boroughs to hold a court for the recovery of small debts. Our list further shews several other projects of great interest to our readers. We now close these general remarks, which we shall continue from time to time; and we shall notice in detail all these projected alterations as soon as they appear.

PRACTICAL POINTS OF GENERAL INTEREST.

SEDUCTION.

THE following case we believe to be new in its circumstances, and to establish a principle of some importance. The declaration, which was in case, stated that one M. H., being the daughter and servant of the plaintiff, with the consent of the plaintiff, became the apprentice of one A., the wife of the defendant, for the term of two years, for the purpose of learning the business of a milliner, in consideration of 29*l.* paid by the plaintiff, and in consideration that the said A., with the consent of the defendant, should find and provide the said M. with meat, drink, and lodging; nevertheless the defendant debauched her, whereby she became ill, and incapable of serving the said A. and learning the said business, &c. This was held bad on demurrer. The following was the argument and opinions of the Judges.

Hughes, in support of the demurrer.—This was not a common action for seduction, but a special action on the case, founded on a contract between the defendant and the plaintiff, by which, in consideration of a sum of money paid to the defendant, a benefit was to be derived by the plaintiff, not immediately, but indirectly, and which, in consequence of the wrongful act of the defendant, the plaintiff has wholly lost. [*Parke, B.*—The declaration does not state that the defendant contracted. If you had gone upon the contract, you should have declared in assumpsit.] The rule that, to maintain an action for an injury of this nature, the parties must stand in the relation of master and servant at the time of the injury, applies only to actions *per quod servitium amisit*. The loss here is independent of the service.

In *Hall v. Hollander*, 4 B. & C. 660, *Bayley, J.*, suggested an action of this nature. He says, "In this case it was proved that the father did not necessarily incur any expense; if he had done so, I am not prepared to say that he could not have recovered upon a declaration describing as the cause of action the obligation of the father to incur that expense." In *Booth v. Charlton*, and *Johnson v. M^r Adam*, cited in *Dean v. Peel*, 5 East, 47, *Wilson, J.*, is stated to have held at Nisi Prius, that where the daughter was under age, the action was maintainable, though she was not part of her father's family at the time she was seduced. In *Speight v. Olivera*, 2 Stark. N. P. C. 493, where A., with intent to seduce the servant and daughter of B., hired her as his servant, and by that means obtained possession of her person, it was held that B. might maintain an action against A. for such seduction. [*Parke, B.*—There the wrong was done under colour of a contract, and the defendant's fraud did not destroy the original relationship between the father and the child. In the cases cited in *Dean v. Peel*, though the daughter was not at her father's house at the time, she was only casually absent on a visit, with an *animus revertendi*; and, as Lord *Ellenborough* observed, "In those cases the implied relationship of master and servant continued." Formerly, the action of seduction was held not to be maintainable without proof that the relationship of master and servant existed, and in all cases some service was held necessary. That rule was afterwards so far relaxed, that if the child was a minor, but of an age capable of acts of service, such service, it was held, might be presumed. Here the declaration admits that she was not in her father's service; for it states the injury to have been done whilst she was the apprentice of the defendant's wife, and whilst she was residing in his house. You do not show on your declaration any contract by the defendant to take care of the daughter's morals, nor does the law imply any such promise to the father.] The declaration states that the plaintiff has paid to the defendant a sum of money for the instruction of his daughter, and for her board and lodging, and he is deprived of that advantage by the conduct of the defendant. [*Lord Abinger, C. B.*—Does it follow that she is not to have her board and lodging still? But suppose a man to take a lodging for his son or daughter: does the law imply a contract to take care of their morals? *Parke, B.*—There may be a duty arising out of the contract of apprenticeship, but you do not state such a contract between the defendant and the plaintiff; neither do you show any other facts from which a contract by the defendant to take care of the daughter's morals may be implied.]

Lord Abinger, C. B.—If the declaration can be amended, by stating any thing from which a duty, express or implied, might arise, you may have leave to amend on payment of costs.

Leave to amend within a week, otherwise judgment for the defendant. *Harris v. Butler*, 2 Mee. & Wels. 539.

WARRANTY OF A GUN.

If a vendor, at the time of a sale, makes an affirmation, it amounts to a warranty, provided it appears in evidence to have been so intended: *per Buller, J., per Bayley, J.*, 4 C. & P. 46. It is not necessary that the words "warrant" or "warranty" should be used. 3 Man. & Ry. 1 Stark. N. P. C. 505; thus it was held that a representation made by a seller in the course of a conversation relating to the contract, that the buyer "might depend upon it that the horse was perfectly quiet and free from vice," was held to amount to a warranty. *Cave v. Coleman*, 3 Man. and Ry. 2. And a declaration by a defendant, that he "could warrant" the chattel sold, is equivalent to an express undertaking. *Button v. Corder*, 7 Taunt. 405. But it is not every representation on the part of the seller which will constitute an undertaking, on which he is legally liable. Mere vague expressions used by the seller at the time of the sale will not amount to a warranty, for every one in selling of his wares will affirm that his wares are good; and the rule therefore, is that *simplex commendatio non obligat*. "A seller is not liable if he merely make use of those expressions which are usual to sellers, who praise at random the goods that they are desirous to sell, for the buyer ought not to have relied upon such vague assertions." Sug. Vend. p. 3. And no action can be maintained where the seller did not intend to give an absolute warranty, but merely express an opinion; therefore, when the defendant inserted on the catalogues of sale the name of a celebrated artist, as the painter of a particular picture, which was proved not to be the fact, but no fraud was imputed; he was held not liable. *Jendwine v. Slade*, 2 Esp. 572; *Morton's Vendors*, 337. These rules have been lately applied to a new case, that of a warranty of a gun, under the following circumstances:—

At the trial before *Alderson, B.*, at the Somersetshire Summer Assizes, 1836, it appeared that in June, 1833, the plaintiff's father saw in the shop of the defendant, a gun-maker in Bristol, a double barrelled gun, to which was attached a ticket in these terms:—"Warranted, this elegant twist gun, by Nock, with case complete, made for his late Majesty, Geo. IV.,

cost 60 guineas: only 25 guineas." He went into the shop, and saw the defendant, and examined the gun. The defendant (according to *Langridge's* statement) said he would warrant the gun to have been made by Nock, for king Geo. IV., and that he could produce Nock's invoice. *Langridge* told the defendant he wanted the gun for the use of himself and his sons, and desired him to send it to his house, at Knowle, about two miles from Bristol, that they might see it tried. On the next day, accordingly, the defendant sent the gun to *Langridge's* house, by his shopman, who also on that occasion warranted it to be made by Nock, and charged and fired it off several times. *Langridge* ultimately bought it of him for £24., and paid the price down. *Langridge* the father, and his three sons, used the gun occasionally: and in the month of December following, the plaintiff, his second son, having taken the gun into a field near his father's house to shoot some birds, putting in an ordinary charge, on firing off the second barrel, it exploded, and mutilated his left hand so severely as to render it necessary that it should be amputated. There was conflicting evidence as to the fact of the gun's being an insecure one, or of inferior workmanship. Mr. Nock, however, proved that it was not manufactured by him. The defendant also denied that any warranty had been given. The learned Judge left it to the jury to say, first, whether the defendant had warranted the gun to be made by Nock, and to be a safe and secure one; secondly, whether it was in fact, unsafe, or of inferior materials or workmanship, and exploded in consequence of being so; and thirdly, whether the defendant warranted it to be a safe gun, knowing that it was not so. The jury found a general verdict for the plaintiff, damages £400. A rule nisi having been obtained for a nonsuit.

Parke, B., in delivering judgment said, "We are not prepared to rest the case upon one of the grounds on which the learned counsel for the plaintiff sought to support his right of action, namely, that wherever a duty is imposed on a person by contract, or otherwise, and that duty is violated, any one who is injured by the violation of it, may have a remedy against the wrong-doer: we think this action may be supported, without laying down a principle which would lead to that indefinite extent of liability, so strongly put in the course of the argument, on the part of the defendant; and we should pause, before we made a precedent by our decision, which would be an authority for an action against the vendors, even of such instruments and articles as are dangerous in themselves, at the suit of any person whomsoever, into whose hands they might happen to pass, and who should be injured thereby. We do not feel it necessary to go to that length, and our judgment proceeds upon another ground. If the instrument in question, which is not of itself dangerous, but which requires an act to be done, that is, to be loaded, in order to make it so, had been simply delivered by the defendant, without any contract or representa-

tion on his part to the plaintiff, no action would have been maintainable for any subsequent damage which the plaintiff might have sustained by the use of it. But if it had been delivered by the defendant to the plaintiff, for the purpose of being so used by him, with an accompanying representation to him that he might *safely so use it*, and that representation had been *false to the defendant's knowledge*, and the plaintiff had acted upon the faith of its being true, and had received damage thereby, then there is no question, but that an action would have lain, upon the principle of a numerous class of cases, of which the leading one is that of *Pasley v. Freeman*, 3 T. R. 51; which principle is, that a mere naked falsehood is not enough to give a right of action; but if it be a falsehood told with an intention that it should be acted upon by the party injured, and that act must produce damage to him; if, instead of being delivered to the plaintiff immediately, the instrument had been placed in the hands of a third person, *for the purpose of being delivered to and then used by the plaintiff*, the like false representation being knowingly made to the intermediate person to be communicated to the plaintiff, and the plaintiff had acted upon it, there can be no doubt but that the principle would equally apply, and the plaintiff would have had his remedy for the deceit; nor could it make any difference that the third person *also* was intended by the defendant to be deceived; nor does there seem to be any substantial distinction if the instrument be delivered, in order to be so used by the plaintiff, though it does not appear that the defendant intended the false representation itself to be communicated to him. There is a false representation made by the defendant, with a view that *the plaintiff should use the instrument* in a dangerous way, and, unless the representation had been made, the dangerous act would never have been done. If this view of the law be correct, there is no doubt but that the facts, which upon this record must be taken to have been found by the jury, bring this case within the principle of those referred to. The defendant has knowingly sold the gun to the father, *for the purpose of being used by the plaintiff*, by loading and discharging it, and has knowingly made a false warranty, that it might be safely done, in order to effect the sale; and the plaintiff, on the faith of that warranty, and believing it to be true, (for this is the meaning of the term *confiding*), used the gun, and thereby sustained the damage which is the subject of this complaint. The warranty between these parties has not the effect of a contract; it is no more than a representation; but it is no less. The delivery of the gun to the father is not, indeed, averred, but it is stated that, by the act of the defendant, the property was transferred to the father, *in order that the son might use it*; and we must intend that the plaintiff took the gun with the father's consent, either from his possession or the defendant's; for we are to presume that the plaintiff acted lawfully, and was not a trespasser, unless the contrary appear

We therefore think, that as there is fraud, and damage, the result of that fraud, not from an act remote and consequential, but one contemplated by the defendant at the time, as one of its results, the party guilty of the fraud is responsible to the party injured. We do not decide whether this action would have been maintainable if the plaintiff had not known of and acted upon the false representation; nor whether the defendant would have been responsible to a person not within the defendant's contemplation at the time of the sale, to whom the gun might have been sold, or handed over. We decide that he is responsible in this case for the consequences of his fraud, whilst the instrument was in the possession of a person to whom his representation was either directly or indirectly communicated, and for whose use he knew it was purchased."

Rule discharged.—*Langridge v. Levy*, 2 Mee. & Wels. 519.

DISPUTED DECISION.

SOLICITOR.—CONFIDENTIAL COMMUNICATIONS.

HAVING considered that the law relating to confidential communications between attorney and client was well settled, and placed on a sound, rational, and intelligible principle, by the decision in *Doe d. Shellard v. Harris*, 5 C. & P. 592, I felt considerable surprise and regret at finding it rendered as loose and uncertain as ever by the recently reported decision in *Sauyer v. Birchmore*, 3 M. & K. 572. The effect of that decision appears to be the imposition of a heavy fine, in the shape of costs, on a gentleman whose nice sense of honour induced him to decline disclosing the confidential communications of persons who had been his clients, but for whom, at the time of his examination, he had ceased to be professionally concerned. The distinction taken between matters of fact and matters of confidential communication, as attributed by the reporter to the learned Judge, appears to be wholly incapable of practical application. What are matters of confidential communication, more or less than the confidential communications of matters of fact? Is a client, seeking advice, to conceal matters of fact, lest they should afterwards be extorted from his professional adviser? Mr. Baron Parke was of opinion "that the privilege applies to all cases where the client applies to the attorney in a professional capacity." All cases, without making the impracticable distinction between matters of confidential communication and matters of fact. It is much to be regretted that the case of *Doe v. Harris* was not cited in *Sauyer v. Birchmore*. If gentlemen at the Chancery Bar feel disinclined to cite a *nisi prius* case, yet *Doe v. Harris* might have been entitled to some respect, as having been decided by Mr. Baron (then Justice) Parke—not in "the hurry of *nisi prius*," but—after the subject had engaged the attention of his Lordship and also of the

Lord Chancellor, the two Lord Chief Justices, and the Lord Chief Baron ! It is evident that Lord Tenterden took a contracted and erroneous view of this subject, and the unanimous opinion of all the Chiefs of all the Courts at Westminster, went to overrule the decision of Lord Tenterden on another and highly important branch of it. The case of *Bramwell v. Lucas*, 2 B. & C. 745, forms the chief support of the decision now disputed ; and I venture, most respectfully, to assert that very few professional men, after reading *Cromach v. Heathcote*, 2 B. & B. 4, and also *Doe v. Harris*, would hesitate in coming to the conclusion that the decision in *Bramwell v. Lucas* has been virtually overruled. The question is one of the greatest importance to all professional men.

D.

SELECTIONS FROM CORRESPONDENCE.

FRENCH LAW.—SECURITY FOR COSTS.

THE case of *The Doctors Wolowski and Koreff v. The Earl of Lincoln and others*, and *The Earl of Lincoln v. The Doctors Wolowski and Koreff*, which has excited the utmost interest at Paris, was called on Saturday, the 25th of November, before the *Tribunal de Premiere Instance*, but was postponed on account of the absence of M. Berrier, the *Avocat* of the Earl of Lincoln. It will be heard at the end of this, or the beginning of next week. The Earl of Lincoln is defendant, with the Duke and Duchess of Hamilton, and the Countess of Lincoln, in the action, for the demand of 400,000 francs (£16,000,) but plaintiffs in the same action for the illegal arrest to which his Lordship was subjected ; this, in the French courts, is called "*demande reconventionnelle*." It is, in fact, the fusion of two actions into one. Thus, had there been a "*désistement legal*," or *non pros.* by the plaintiffs in the original action for the demand, the Earl would have been compelled to bring a cross-action for the illegal arrest ; but, as the case now stands, both questions will be tried at the same time.

As foreigners, the Doctors were liable to be called on for security for costs and the eventual damages to the Earl of Lincoln. But the application, to this effect, was resisted by them, on the ground that they were authorised by an "*Ordonnance du Roi*," to practise medicine in France, and that this privilege put them upon the same footing in recovering their fees as the French doctors. They further submitted, that, as the Earl of Lincoln admitted having intended to pay them 24,000 francs for their professional services, this sum, was ample security for costs and damages. The object of this application having been chiefly to shew the determination of the noble parties to carry

the case before the Court, it was not persisted in.

The management of the case from the commencement, has been confided by the noble parties, to Mr. Okey, the English lawyer at Paris.

EXAMINATION OF ARTICLED CLERKS.

Sir,

I observe in your number of 25th of November, certain hints of a probable increase in the strictness of the Examination of Attorneys. It appears to me to be rather unreasonable that the examiners should now require a higher qualification than they did last year. Those who were admitted a twelvemonth since have the same duties to perform as those who were admitted last term, and if the examiners could certify that the former were fitted to act as attorneys upon their standing the test then used, why should those in future to be examined be expected to attain a higher degree of knowledge ?

It appears to me, also, that too much stress is laid on the exertions of articulated clerks, and too little on the care which it is the duty of the attorneys to whom they are articulated to use. It is unfortunately the case, that many attorneys do not enquire whether their clerks ever devote a part of their leisure time to legal study, and some scarcely give them any leisure for that purpose, expecting them to devote their whole time and thought to the routine of practice in their offices, whence alone, it is impossible that they should attain sufficient knowledge to qualify themselves for the examination.

Could not and should not the examiners, who are partly composed of the most eminent attorneys, devise some plan which would be likely to remedy this ?

A. F. B.

[Our Correspondent is rather mistaken in the inference he has drawn from our remarks at p. 56. We said "that so far as we could learn there was no intention to increase the difficulty of the Questions," but we hinted that probably the quality of the answers might be expected to be improved. We believe that three-fourths of the candidates last term performed their exercises well—many of them eminently so ;—but we deem it right to advise the future candidates to exert themselves. This is surely the safe course, and must be beneficial to the student. We cannot agree with our correspondent, that it would be unreasonable to expect the candidates of next year to be better prepared than those of the present. Ed.]

ABOLISHING IMPRISONMENT FOR DEBT, AND EXTENDING THE REMEDIES OF CREDITORS.

THIS bill has been renewed; but instead of its introduction, as on the last occasion, in the House of Commons, it has in the first instance been brought into the Upper House by the Lord Chancellor. It is in the same form as the bill of the Attorney General in its amended shape by the Committee during the early part of the last session, except in the following clauses, viz.:

That the Commissioners of Bankruptcy acting in execution of this act are to constitute a Court of Record, with power to make rules and orders for regulating the practice of the new Courts, subject to the approval of the Lord Chancellor. (s. 13.)

It also provides that the Judges of the Courts of the Universities of Oxford and Cambridge may appoint a special commissioner and other officers to carry the act into effect within their jurisdiction. (s. 16.)

The 19th section provides for making bankrupt a debtor who does not pay or secure such debts as may be demanded within twenty-one days after a creditor for £100, or two creditors for £150, or three or more for £200, shall file affidavits of their debts in the Bankruptcy Court.

The powers conferred by the act are by the 35th section to be applicable to the Courts of Lancaster and Durham within their jurisdiction, in the same manner as the Superior Courts at Westminster.

The arguments for and against the measure have been fully stated on former occasions. We know not that any thing new can now be added.

On the one hand it is properly urged that the remedy of creditors against the *property* of their debtors is lamentably defective, and that consequently many debtors remain in prison, living (sometimes extravagantly) on incomes which their creditors cannot reach; whilst many are uselessly kept in prison who have not a farthing to pay, and whose poverty has been occasioned solely by misfortune. In some cases, also, it is urged that men are imprisoned for claims which have no foundation in justice; and that, at the best, the present system is attended with much unmerited hardship and unavoidable misery.

On the other hand it is contended that the fear of arrest induces a great number of persons to pay their debts who otherwise

would refuse, and who have no tangible property which their creditors can render available, and which, even under the proposed alterations, can never be reached. It has also been asserted that the evils complained of will still continue, though in a different form, under the proposed law; for those who now abuse the process of the Court can scarcely be expected to abstain either from swearing that they believe the debtor is about to abscond, or instituting proceedings of a criminal nature, under which all who have the means will prefer complying with the demands upon them to being confined as fraudulent debtors, or subjected to a public trial for obtaining goods under false pretences. These proceedings, it may be feared, will generally be conducted by the least reputable part of the profession, and who will scruple little in finding means to screen themselves from punishment. It is apprehended, therefore, that whilst the honest creditors who disdain resorting to any undue means for obtaining their debts, those of a different class will, by a prompt and less scrupulous conduct, gain the advantage; and that, although the bill will thin the gaols of debtors, it will greatly increase the number of alleged criminals.

It is also urged, that whilst the wholesale trader has been partially pacified in his opposition to the bill, by giving him the power of compelling a bankruptcy by his debtor in twenty-one days, the retail dealer is thus made entirely dependent on his wholesale creditor; and yet he, the retailer, is deprived of the means of compelling the consumer to pay him in return, because a large class of consumers, living in furnished houses or apartments, on incomes not available under the other clauses of the bill, will escape altogether from the pressure of legal process.

To this it is answered, that the shopkeeper must in future take better care as to the persons he trusts with his wares. Whether the shopkeeper can change his mode of dealing, and insist on his customers paying him in ready money, is another question, and which he will be unwilling to try at the risk of giving offence, and losing his business.

Such are some of the suggestions we have received on this subject. We are desirous that the question should be fairly discussed on both sides: and we hope that ultimately the right conclusion—that which will be most beneficial to the public—will be arrived at.

NEW BILLS IN PARLIAMENT.

CONTROVERTED ELECTIONS.

THIS bill was brought in the 21st Nov. 1837. As its provisions have not hitherto been stated in this work, and many of them are very important to the profession, we shall give the clauses somewhat fully, and especially those which may concern the practitioner.

The 1st section proposes to repeal the 9 G. 4, c. 22, and so much of 42 Geo. 3, c. 106, and 47 Geo. 3, c. 14, as relates to the interchange of lists and statements in writing, after the chairman of a select committee shall have been chosen, and also as relates to the declaring certain objections frivolous or vexatious.

The following clauses it will be sufficient to state concisely :—

2. Upon complaint made to the House of Commons of an undue election or return, or that no return has been made, a time to be fixed for considering thereof, and notice given.

3. The House may alter the time, giving the like notice and order: and if the petitioners do not attend at the time required, the order to be discharged.

4. No such petition shall be proceeded upon, unless the same at the time it is presented to the House shall be subscribed by some person or persons claiming therein to have had a right to vote at the election to which the same shall relate, or to have a right to be returned as duly elected thereat, or alleging himself or themselves to have been a candidate or candidates at such election, or claiming therein to have had a right to vote at the election of any delegate or commissioner for choosing a burgess for any district of burghs in that part of Great Britain called Scotland, to which the same shall relate; and also, unless there be contained therein or annexed to such petition the names, additions and usual places of residence of the persons who are proposed to become sureties to the recognizances in the manner hereinafter provided.

5. Recognizances to be entered into within fourteen days by petitioners and sureties to pay costs. The petitioner in 1,000*l.* and two sureties in 500*l.* each, or four sureties in 250*l.* each. The time may be enlarged to thirty days.

6. Recognizances to be entered into before the speaker, and the sufficiency of sureties to be allowed by him, on the report of two persons appointed by him to examine the same, of which two persons the clerk or one of the clerks assistant of the House of Commons shall always be one, and one of the following officers, not being a member of the said House, shall be the other; (that is to say) Masters of the High Court of Chancery, Clerks in the Court of King's Bench, Prothonotaries in the Court of Common Pleas, and Clerks in the Court of Exchequer. Seven days to be allowed before the sureties are examined, and three days' notice to be given.

7. Parties or sureties living more than forty miles from London, may enter into recognizances before a justice of the peace; and the persons to whom it is referred by the speaker to examine the sufficiency of the sureties, may receive in evidence any affidavits relating thereto which shall be sworn before any such persons, or any Master of the High Court of Chancery or before any of her Majesty's justices of the peace, who are hereby each of them respectively authorized to administer such oath, and to certify such affidavit under his hand.

8. The House of Commons shall not permit any such petition to be withdrawn, except so far as the same may relate to the election or return of any member who shall, since the same shall have been presented, have vacated his seat by death or in any other manner, or in consequence of some matter which shall have arisen since the same was presented, and which shall be specially stated and verified upon oath to the satisfaction of the House.

9. Voters, upon petition, may become parties to oppose or defend the return.

10. Where the seat becomes vacant, or the sitting member declines to defend his return before the petition is taken into consideration, notice is to be sent by the speaker to the returning officer of the place to which the petition relates. Notice to be affixed on the doors of the county hall, &c. and inserted in the London Gazette; and consideration of the petition discharged.

11. Within thirty days after notice, voters, &c. may be admitted as parties to defend the return.

12. Members having given notice of their intention not to defend shall not be admitted as parties.

13. Lists of votes intended to be objected to, to be delivered to the clerk of the House of Commons.

14. Evidence to be confined to objections particularized in the lists.

15. On the days appointed for taking petitions into consideration, the House to proceed to the order of the day for that purpose before any other business, except to swear in members, or attend her Majesty, or receive messages from the Lords, &c.

16. The Serjeant-at-Arms, before the reading of the order, to require the attendance of members. The House to be counted, and if there are not one hundred members present, the House to adjourn, &c.

17. If one hundred members are present, the parties, &c. to be ordered to the bar. Names of members to be put in six boxes or glasses, and drawn out alternately, and read by the speaker, till five be drawn, &c. Previous to taking a petition into consideration, the names of members to be put into a box, &c.

18. How to proceed where two or more petitions are ordered to be taken into consideration on the same day.

19. Number of members to be present to form more than one ballot.

20. If the name of any member who shall

have given his vote at the election complained of as aforesaid, or who shall be a petitioner complaining of an undue election or return, or against whose return a petition shall be then depending, or whose return shall not have been brought in fourteen days, shall be drawn, his name shall be set aside, and not be subjected to challenge in the manner hereinafter specified.

21. Members above sixty years of age may be excused.

22. Or members who have previously served on a select committee during the same session.

23. No member who, after having been appointed to serve on any such select committee, shall, on account of inability or accident, have been excused from attending the same throughout, shall be deemed to have served on any such committee.

24. If members offer other excuses, the opinion of the House to be taken thereon.

25. Members excused for reasons applying especially to one petition may be re-drawn.

26. Instead of members excused, others to be drawn. If the number of thirty-three members cannot be completed, the House to adjourn. But if one committee has been formed, the House may proceed with other business; and the orders for the remaining petitions may be adjourned.

27. When the lists are complete, the House to proceed to other business.

28. Five challenges to be allowed to each party.

29. First five names drawn and not excused or challenged, to form a committee. Time and place of meeting to be appointed by the House. Members of select committee to be sworn.

30. How to proceed where a list cannot be completed.

31. If more than two parties on distinct interests, each party to have the right of challenging five.

32. If within one hour after the time appointed for taking any petition complaining of an undue election or return, or omission to make a return, into consideration, the sitting member or sitting members, or other party opposing the petition, shall not appear by himself or themselves, or his or their counsel or agents, or if at the time so appointed as aforesaid, there shall be no party before the House opposing such petition, or any petition touching a right of election, the House shall proceed to appoint a select committee to try the merits of such petition in the manner hereinafter prescribed, except that no challenge shall be allowed in behalf of the party not appearing.

The clauses appointing barristers as assessors are fully stated.

33. The speaker of the House of Commons shall, within three days from the commencement of every session, nominate three persons, being barristers of not less than seven years' standing, as fit and proper persons to act as

assessors to election committees; and the opinion of the House shall thereupon be taken as to the fitness of confirming such nomination; and any such nomination of any such person shall, upon being so confirmed, take effect as a valid appointment of such persons to act as assessors to the election committees of the House of Commons, with all the powers, privileges, and duties hereinafter annexed to such office of assessor; and in case of the death, resignation, or other disqualification of any such assessor during any session of parliament, the speaker shall, within three days after he shall have received notice thereof, inform the House thereof, and nominate a fit person qualified as aforesaid to fill such vacancy; and the opinion of the House shall in like manner be taken as to the fitness of confirming such nomination; and such nomination shall, upon being so confirmed in like manner, take effect as a valid appointment to such office of assessor.

34. If the House shall, upon its opinion being so taken as aforesaid, refuse to confirm any such nomination of assessor, the said speaker shall within three days from and after such refusal, nominate another person so qualified as aforesaid, and submit his name in like manner to the House, and take the opinion of the House as to the fitness of confirming such nomination; and if such name be again rejected by the House, the speaker shall thereupon within three days nominate some person other than those already nominated by him as aforesaid, and in like manner offer such nomination to the House for its confirmation, and so shall do until some such nomination be confirmed by the House; and any such nomination which shall be confirmed by the House shall upon such confirmation take effect as a valid appointment of the person so nominated to the said office of assessor.

35. If at any time during any session of parliament, it shall appear to the speaker that the number of election petitions presented is so great that the three assessors aforesaid will not be able to preside at the respective trials of such petitions, without causing considerable inconvenience, it shall in such case be lawful for the said speaker, within three weeks from the meeting of parliament, to nominate, subject in the same manner to the confirmation of the House as is hereinbefore provided with respect to the assessors, one or more barristers of not less than seven years' standing, to officiate as assistant assessors to election committees; and if such confirmation be refused, then to nominate others so qualified, until the nomination of a sufficient number of such assistant assessors shall have been confirmed by the House; and the said nominations or any one or more of them when so confirmed by the House, shall thereupon take effect as a valid appointment of the person or persons so nominated to the office of assistant assessor to election committees.

36. No assessor to election committees shall practise as a barrister, and that no assessor or assistant assessor shall hold any other office or

place of profit under the Crown, except the office of recorder in any corporate city, borough, or cinque port, nor be capable of being elected or sitting in parliament.

37. The oaths of the assessor, and assistant assessor are then prescribed.

38. *There shall be paid to each of the said assessors a salary of two thousand pounds by the year, and such salaries and also all sums which the House of Commons may at any time determine to be fit and proper to be paid to any assistant assessor as a remuneration for his services under the provisions of this act, and also the necessary expenses of the court of appeal hereinafter mentioned, shall be paid by the Lord High Treasurer or the Lords Commissioners of her Majesty's Treasury for the time being out of the consolidated fund of the United Kingdom of Great Britain and Ireland.*

39. When any such select committee shall have been so appointed as aforesaid, the three assessors or any two of them, shall by writing under their hands nominate and appoint one of such assessors, or in case that no one of such assessors shall at such time be able to attend on such select committee, one of such assistant assessors as aforesaid, to be and act as chairman of such select committee: Provided always, that no such appointment shall be valid until it shall have been confirmed by the said speaker under his hand; and provided also, that every such appointment of assistant assessor to act as chairman of such select committee shall certify that such appointment is made in consequence of the inability of any one of the assessors to act as chairman to such committee; and in case of the death, resignation or other disability to attend on the part of such chairman during the sitting of such select committee, the said assessor shall in like manner be subject to all the said provisions and regulations, have power to appoint any one of themselves, or in case of necessity any one of the assistant assessors, to be and act as chairman to such select committee in place of such chairman so dying, resigning, or otherwise disabled.

40. Such assessor or assistant assessor so appointed to act as chairman of such select committee shall act as chairman of such committee, and shall exercise all the rights and privileges hitherto exercised by persons acting as chairman of select committees in elections, or hereinafter assigned to any person so acting: Provided, that no such chairman shall in any case be allowed to vote in such committee.

The following is the substance of several clauses:—

41. Committees to be attended by a short hand writer.

42. Committee empowered to send for and examine persons, papers, and records. Witnesses misbehaving may be reported to the House, and committed to the custody of the serjeant at arms.

43. Committee to decide, and to report their decision to the House, &c. Decision to be final, except in certain cases.

44. Committees may report their determinations on other matters to the House.

45. Committees not to adjourn for more than twenty-four hours, without leave, &c.

46. Committee-man not to absent himself. Committee not to sit until all be met. On failure of meeting within one hour, adjournment to be made.

47. Chairman to report absentees, who are to be directed to attend, &c.

48. If two members be absent, committee to adjourn.

49. If any committee is reduced to less than four by the non-attendance of its members, it shall be dissolved.

50. When committee is deliberating, the room to be cleared, &c.

51. No determination to be made by any committee unless the requisite number of members are present.

52. Names of members voting for or against any resolution to be announced by chairman. Chairman to state his own assent or dissent.

53. Committee to have power to sit during sittings of House.

54. How oaths are to be administered, &c.

55. When the merits of a petition depend on questions respecting the right of election, &c. committee to require statements in writing of such rights, and to report thereon, &c.

56. Petitions of appeal may be presented to the House within six months after a report has been made on any right of election, &c.

57. Notice of the time fixed for taking petitions into consideration to be inserted in the Gazette, and sent to returning officers, &c.

58. Any person or persons, at any time before the day so appointed for taking such petition into consideration, may petition the House to be admitted as a party or parties to defend such right of election, or of choosing, nominating, or appointing the returning officer or officers; and such person or persons shall thereupon be so admitted, and shall be considered as such to all intents and purposes whatever.

59. At the hour appointed by the House for taking such petition into consideration, the House shall proceed to appoint a select committee to try the merits thereof, in the same manner as select committees are hereinbefore by this act directed to be appointed: Provided always, that if the name of any member shall be drawn who shall have served on the select committee, whose determination forms the subject of complaint in the petition then about to be taken into consideration, the name of such member shall be set aside so that he shall not serve in such committee; and such select committee shall be sworn to try and determine the merits of such petition, so far as the same relate to any question or questions respecting the right of election for the place to which the petition shall relate, or respecting the right of appointing, nominating, or choosing the returning officer or returning officers who are to make return of such election; and the determination of such committee on such question or questions shall be entered in the journals

of the House, and shall be held and taken to be final and conclusive in all subsequent elections of members of parliament for that place to which the same shall relate, and to all intents and purposes whatsoever, any usage to the contrary notwithstanding.

60. Powers and regulations given to other election committees to extend to appeal committees.

61. Committees not dissolved by the prorogation of parliament, &c.

The following provisions relating to *Costs* are important :

62. Any such select committee, appointed as aforesaid, shall in every case allow or apportion the costs so incurred to one or both parties, in such manner as it may think proper, unless any rules or regulations shall at such time have been made, in the manner and by the authority hereinafter specified, with respect to the allowance or apportionment of costs incurred in prosecuting or opposing such petition, in which case such committee shall allow or apportion costs in accordance with such rules or regulations.

63. The costs and expenses of prosecuting or opposing any petition presented under the provisions of this act, and the costs, expenses, and fees which shall be due and payable to any witness summoned to attend before such committee, or to any clerk or officer of the House of Commons, upon the trial of any such petition, shall be ascertained in manner following; (that is to say,) that on application made to the Speaker of the House of Commons, within one year after the determination of the merits of such petition, by any such petitioner, party, witness, or officer, as before mentioned, for ascertaining such costs, expenses, or fees, the Speaker shall direct the same to be taxed by two persons, of whom the assessor or assistant assessor who shall have presided at the time of such petition shall always be one, and one of the following officers, not being a member of the House, shall be the other; (that is to say,) Masters in the High Court of Chancery, Clerks in the Court of Queen's Bench, Prothonotaries in the Court of Common Pleas, and Clerks in the Court of Exchequer; and the persons so authorized and directed to tax such costs, expenses, and fees shall, and they are hereby required to examine the same, and to report the amount thereof, together with the name of the party or parties liable to pay the same, together with the name or names of the party or parties entitled to receive the same, to the Speaker of the said House, who shall, upon application made to him, deliver to the party or parties a certificate, signed by himself, according to the form given in Schedule (B.) to this act annexed; and the person so appointed to tax such costs, expenses, and fees, and report the amount thereof, are hereby authorized to demand and receive for such taxation and report such fees as shall be from time to time fixed by any resolution of the House; and such certificate,

so signed by the Speaker, shall be conclusive evidence as well of the amount of such demands, as of the title of the several parties to recover the same, in all cases and for all purposes whatsoever, and the witness, officer, or party claiming under the same, shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

64. In all cases the persons hereinbefore authorized and directed by the Speaker of the House of Commons to tax such costs and expenses, shall allow all reasonable costs as between attorney and client.

65. Each of the persons so authorized as aforesaid by the Speaker of the House of Commons to tax such costs, expenses, or fees, and also any Master of the High Court of Chancery, or any of her Majesty's Justices of the Peace, shall be, and they and each of them are hereby authorized and empowered to take any affidavit relative to such costs, expenses, or fees, or the taxation or non-payment thereof, and to administer the oath for taking such affidavit; and all and every person convicted of wilfully false swearing in any affidavit authorized to be made by this act, shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury.

66. The party or parties entitled to such costs and expenses, or for his, her, or their executors or administrators, may demand the whole amount thereof, so certified as above, from any one or more of the persons respectively who are hereinbefore made liable to the payment thereof in the several cases hereinbefore mentioned, and in case of non-payment thereof to recover the same by action of debt in the court of Queen's Bench at Westminster or Dublin, in which action it shall be sufficient for the plaintiff or plaintiffs to declare that the defendant or defendants is or are indebted to him or them in the sum mentioned in the said certificate; and the said plaintiff or plaintiffs shall upon filing the said declaration, together with the said certificate and affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by nil dicet, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law; provided always, that the validity of such certificate, the handwriting of the speaker thereunto being duly verified, shall not be called in question in any court upon the allegation of any matter or thing anterior to the date thereof.

67. In every case where the amount of such costs and expenses shall have been so recovered from any person or persons, it shall and may be lawful for such person or persons to recover in like manner from the other persons, or any of them (if such there shall be) who are liable to the payment of the same costs and expenses, a proportionable share thereof, according to the number of persons so liable.

68. Recognizances, when to be estreated, &c.

69. Returning officer may be sued for neglecting to return any persons duly elected.

The Forms of Procedure are thus provided for :

70. The speaker of the House of Commons, together with the said assessors or with any two of them, shall and may from time to time make such general rules and orders respecting the forms and manner of proceeding relating to the trial of controverted elections before such select committee as aforesaid as shall not be incompatible with the provisions of this act, or of any other act of parliament not hereby repealed, and also respecting the fixing of costs incurred therein as to them may seem expedient; and all such rules and orders shall be laid before the House of Commons immediately upon the meeting of the same, if parliament be then sitting, or if parliament be not sitting, then within five days after the next meeting thereof; and no such rule or order shall have effect until three weeks after the same shall have been so laid before the House; and any rule or order so made shall from and after such time as aforesaid, unless the House shall declare its will to the contrary, be binding and obligatory on the said select committees, and be of the like force and effect as if the provisions contained therein had been expressly enacted by parliament.

The following are the enactments relating to the proposed *Court of Appeal* on questions of law.

71. The said assessors shall form a court of appeal to hear and decide all questions of law which shall be brought by way of appeal from the decisions of the revising barristers upon their circuits; and such appeals shall be by way of special case, which special case shall be signed by the revising barrister from whose decision the appeal shall be brought, upon application made to him for that purpose, by or on behalf of the person whose name shall have been expunged from or not inserted in the list or register of voters by the decision of the revising barrister, or by or on behalf of the overseer or person having objected to such name being inserted in or retained upon the list or register of voters, as the case may be; and the subjects of such appeals shall be questions of law only and not questions of fact; and such court of appeal shall sit somewhere in London or Westminster, and shall be an open court; and one of such assessors shall be nominated by the speaker to preside in such court, and shall be called Chief Assessor of Election Committees of the House of Commons.

72. No appeal from the decision of any revising barrister shall be entertained, unless notice of appeal shall be given to the respondent within fourteen days after such decision, and unless the case of the appellant shall be lodged at such place and within such time as the court of appeal shall direct in that behalf.

73. Every order or decision of the court of appeal, reversing or in anywise altering the decision of the revising barrister, so as to have the effect of making any alteration in the register, shall be forthwith notified by the chief assessor to the clerk of the peace of the county, riding, parts or division of a county, or to

the returning officer of the city or borough, to the list or register of voters of which such decision shall relate, and the clerk of the peace or returning officer shall forthwith alter such list or register of voters in such manner and form as the chief assessor shall by writing subscribed by him direct.

74. A copy of any order or decision of the said court of appeal, such copy purporting to be signed by the chief assessor, shall be sufficient evidence in all cases without proof of the signature of the chief assessor, and shall have the like force and effect as any entry made in any list or register of voters under this or the said recited act.

75. The court of appeal may make such order respecting the payment of the costs of any appeal or of any part of such costs as to the said court shall seem meet; and that in all cases in which any such order shall be made, the amount of such costs, to be ascertained by the said court, shall be stated in a certificate of such order, which certificate shall be signed by the chief assessor, and delivered to the party entitled to receive such costs; and a copy of such certificate shall be served upon the party liable to pay such costs, or left at his usual place of abode; and if upon such service and a demand made, the party so liable shall refuse or neglect to pay the amount stated in such certificate, then and in such case the same shall be recovered in manner hereinafter mentioned.

76. No right of voting at any election of a member or members to serve in parliament shall be extended or limited, or in any way whatsoever affected by any appeal pending in the said court at the time of such election, but it shall be lawful for every person to exercise the right of voting at such election as effectually, and every vote tendered thereat shall be as good as if no such appeal were pending; and that the subsequent decision of any appeal which shall be pending in the said court at the time of any such election shall not in any way whatsoever alter or affect the poll taken at such election, nor the return made thereat by the returning officer.

77. The court may make rules and regulations not inconsistent with the provisions of this act, for the administration of the business of the said court and of the business of the said circuits; and from time to time to vary, alter and repeal all or any of such rules and regulations, and to make others in their stead: provided always, that all the rules and regulations so made, varied and altered, or by which any previously existing rules and regulations shall be repealed, be approved of by the Lord Chancellor for the time being, and be laid before the House of Commons within Ten days after they shall be made, varied, altered or repealed, if the said House shall then be sitting, or if not, then within Ten days after the said House shall next re-assemble: provided also, that it shall not be lawful for the said court by any rule or regulation, to exclude the parties to any appeal from being heard by counsel before the said court.

SUPERIOR COURTS.

Rolls.

EVIDENCE.—AFFIDAVIT OF PARTY.

Held, that in the examination of an agent's accounts in the Master's office, a claimant's affidavit of debt is not sufficient to prove the debt.

Two sets of exceptions were filed to the Master's report,—one by Mr. George Bettiss, alleging himself to have been steward and agent to the late Lord Newburgh; the other set by the present Lord Newburgh.

Mr. Kindersley, with Mr. Duckworth and Mr. Richards, in support of Mr. Bettiss's exceptions.—Mr. Bettiss had been continued by the trustees of Lord Newburgh in his office of agent, and as such he received and paid various sums on account of the estate, and on the winding up of the accounts in the Master's office, he carried in several claims, some of which were allowed, and some were disallowed. The exceptions by Bettiss were in respect of his disallowed claims, as, for instance, in respect to 7l. 6s. 10d., which he had expended in 1814 for Lady Newburgh, the widow of the late, and mother of the present Lord. The whole account in respect of money laid out for her Ladyship in that year was 539l. 15s. 8d., of which sum she settled an account for 531l. 18s. 10d., the difference of 7l. 6s. 10d. having been by mistake omitted from the account. Mr. Bettiss brought his affidavit into the Master's office in support of this claim.

Mr. Pemberton, with Mr. Sharpe, against these exceptions.—The party's affidavits cannot be received to prove his claim; it may be received to purge his conscience. It is not received in the Master's office to prove a debt; but it may be, and is received, to shew that the party believes the debt to be justly due to him.

Mr. Kindersley.—This affidavit was tendered in the Master's office. Can the parties before the Court, in these exceptions, refuse this evidence? If the parties before the Master arrange among themselves to proceed on affidavit, the parties excepting to the report have a right to use that affidavit as if it was made by a third person.

Lord Langdale, M. R.—I cannot allow this affidavit as a proof of debt in this way, because I cannot consider the oath of an interested party good evidence of his claim of debt. No Judge could decide on the oath of a party, without other evidence. If there has been any mistake or omission, the proper course is to get leave to bring in another charge.

Smith v. Lord Newburgh, at Westminster, Nov. 17, 1837.

Equity Exchequer.

PRODUCTION OF BOOKS.

A defendant, residing in England, admitted, in his answer to a bill that he was a partner in a firm carrying on business in Portugal: Held, that he is not bound to know

the transactions of that firm, or to add to his answer a schedule of the books containing such transactions.

This was an exception to the sufficiency of the defendant's answer. The bill sought to charge him with payment of goods sent through his agency to a mercantile house in Portugal, in which he was a partner. The defendant was a merchant carrying on business on his own account in London, and, as such, had dealings with the plaintiff. The bill charged that there were books of account, &c. in the possession of the house in Portugal, which, if produced, would shew the nature of the partnership of the defendant, and that his dealings with the plaintiff was on the partnership account. The defendant set forth, in his answer, a statement of such books of account as concerned his own transactions with the plaintiff, and also the consignments made through his agency by the plaintiff to the house in Portugal, but he denied that he knew any thing of the books, accounts, or transactions of that house, although he was a partner in it.

Mr. Rogers, in support of the exception, urged that the defendant had the means of knowing the accounts and transactions asked for in the bill. He should have inquired as to those transactions, and stated the result of such inquiry in his answer. *Neale v. the Duke of Marlborough*.^a

Lord Abinger, C. B.—The defendant is not bound to know or state what books are in the house in Portugal. He, residing in this country, has no control over the dealings of his partners in another country. A partner here is not presumed to know the affairs or accounts of his partners in a foreign country, although he is bound by their dealings in the partnership business. And even if the defendant was able to give, and did give, a list of the books of account of the firm in Portugal, what would be the use of such a list, if the books themselves were not to be produced? What power has this Court to compel the house in Portugal to produce books? It could not make any order on a person in Portugal, and it would not therefore assume a jurisdiction which it could not enforce.

The exception was overruled.—*Martineau v. Cox*, at Westminster, Nov. 11, 1837.

Queen's Bench.

[Before the Four Judges.]

WASTE.—EVIDENCE.

Where the declaration is for voluntary waste, it must be supported by proof of the waste being wilful: merely permissive waste is not sufficient.

Case for waste in cutting down trees; the declaration being that the defendant wrongfully and wastefully cut down certain trees, and used the premises in so unhusbandlike and improper a manner, that they were greatly dilapidated. Plea, Not Guilty. At the trial

of the cause before Mr. Justice Gaselee, at the Spring Assizes for Suffolk, in 1836, the evidence shewed only a case of permissive waste, and the plaintiff obtained a verdict for 10*l*. A rule had since been obtained to set aside this verdict, and enter a nonsuit.

Mr. Serjeant *Storks* now shewed cause.—This verdict is clearly maintainable upon the evidence offered at the trial. In *Gardiner v. Crossdale*,* the action was against the insurer for the total loss of a ship; and it was held that in that form of action the assured might recover as for a partial loss. [Lord Denman, C. J.—There the one might possibly include the other; but are not the two things here totally different—the permitting something gradually to fall to waste; and the wilfully cutting down trees?] The main thing is, that the premises are out of repair by waste, as in the case in Burrow: the main subject was the loss, not whether it was a total or a partial loss.

Mr. Kelly, in support of the rule, was stopped.

Lord Denman, C. J.—It would be entirely to confound things completely different, if we were to say that a charge of voluntary wilful waste, like that of cutting down trees, could be supported by proof of permissive waste. To say that a man is guilty of destruction, and to prove the charge by shewing that he has not done as much as he might to prevent decay, is what this Court cannot permit.

Mr. Justice Patterson.—I am entirely of the same opinion. The words “suffer and permit” are not used in the declaration, and nothing is there described which import mere neglect of a proper carefulness. The case that has been cited of the policy of insurance, does not apply to the present. The mere question of loss is often, in such cases, the only one sought to be decided. But if there was a declaration on a policy of insurance, as for a total loss of a ship by fire, and it was proved that the loss occurred by shipwreck from the perils of the sea, the declaration could not be supported.

Mr. Justice Williams.—Here is a positive and affirmative allegation of one thing in the declaration; and a proof of another of a different kind. We should get rid of all intelligible distinctions, if we allowed that this declaration could be supported on such evidence.

Mr. Justice Coleridge.—The distinction between voluntary and merely permissive waste, is too strong to allow us to confound the one with the other.

Rule absolute.—*Martin v. Gillham*, M. T. 1837.—Q. B. F. J.

Common Pleas.

ATTORNEY.—EXAMINATION.—ADMISSION.

Where a clerk has duly passed the usual examination, but has lost the papers necessary to procure his admission as an attor-

ney, the Court will permit him to give notice on the first day of Term of his intention to apply on the last day of Term to be admitted.

Wilde, Serjt., on the first day of Term, applied for leave to give notice on behalf of the applicant that it was his intention to apply to the Court, on the last day of Term, to be admitted as an attorney. He had duly served his articleship, and had taken the proper steps to be examined in the usual way, and having been examined, he had passed. The papers, however, which he received, and which were necessary to procure his admission under ordinary circumstances, had since been lost in the office in which he was, and the present application was in consequence made.

The Court granted the application.

Application granted.—*Ex parte Clarke*, M. T., 1837. C. P.

Eschequer.

COGNOVIT.—INSTALMENT.

If a plaintiff is entitled to sign judgment on a cognovit on default of paying one instalment, such judgment may be signed, although he is proceeding to obtain payment of a security given in part payment of the instalment.

Dooling applied for a rule to shew cause why the judgment signed by the plaintiff should not be set aside, on the ground of its having been signed against good faith. The facts disclosed by the affidavit on which he moved were the following. The defendant, in order to secure the payment of a sum of 9,000*l*., had given a cognovit for that amount, payable by instalments of 500*l*. each. The first instalment became due in July last, and the defendant paid the sum of 400*l*. in cash, and gave a bill for 300*l*. accepted by a person in London. This bill had afterwards been dishonoured, and the acceptor had become bankrupt. The plaintiff had proved the bill under the *flat*, and was expected soon to receive a dividend out of the bankrupt's estate. Notwithstanding he had thus made his election, the plaintiff had signed judgment on the cognovit. It was to set aside this judgment that the present application was made.

Lord Abinger, C. B.—The cognovit by its terms provided, that the plaintiff should be at liberty to sign judgment in case of non-payment of one instalment. The first instalment has not been paid pursuant to the terms of the cognovit, and therefore, the plaintiff has a right to sign judgment on that default. The defendant has entered into this agreement, and therefore he is bound by it.

Parke, B., *Alderson*, B., and *Gurney*, B., concurred.

Rule refused.—*Fernando v. Wilks*, M. T. 1837. Excheq.

PRISONER.—SUPERSEDEAS.

How far a prisoner is supersedable in consequence of the plaintiff not declaring in due time.

Douling moved for a rule to shew cause why the defendant in this case should not be discharged out of custody, as to this action, on the ground that the plaintiff had not complied with the directions of 1 Reg. Gen. H. T. 2 W. 4. It appeared from the affidavit on which the motion was founded, that the plaintiff had lodged a writ of detainer against the defendant, who was in custody, for the sum of 800*l*. This writ had been lodged in the month of October 1836, but the plaintiff had not declared since, according to the provisions of the Uniformity of Process Act. The defendant had consequently become supersedable. It was to be observed, however, that the plaintiff had been prevented from declaring by an injunction, obtained at the instance of the defendant. Under such circumstances, the plaintiff should have given notice of that fact to the marshal of the King's Bench. Under these circumstances the plaintiff had been guilty of irregularity, which rendered the defendant supersedable.

Alderson, B., thought the rule to which reference had been made did not apply to such a case as the present, as that was for the benefit of the marshal, and not of the defendant, who had restrained the proceeding of the plaintiff by his injunction.

Rule refused. — *v. Gomperts*, M. T. 1837. Excheq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill stands for second reading on Tuesday the 5th Dec.]

To extend the time limited by the 1 Vic., c. 30, for abolishing certain Offices in the superior Courts of Common Law, and to make provision for a more effective and uniform establishment of Offices in these Courts, and for establishing and ordaining Tables of Fees proper to be demanded and taken in these Courts. *Ld. Abinger*.
[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to children of tender age. 14th Dec. Mr. Serjt. Talfourd.

To amend the Law of Copyright. 14th Dec. Mr. Serjeant Talfourd.

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. 28th Nov. Mr. Mackinnon.

To facilitate the recovery of possession of Tenements, after due determination of the Tenancy. 28th Nov. Mr. Aglionby.

To extend the recovery of debts in the Sheriffs' Courts to sums under 50*l*.

Captain Pechell.

This motion, by leave, was withdrawn on the 21st November.

To amend the Law of Coverture.

Captain Pechell.

This motion by leave was also withdrawn. For the Protection of Licenced Victuallers; to relieve them from the liability of making good the value of articles brought by guests into hotels, inns, &c., without the same being placed under the actual care of the keepers thereof. Captain Pechell. This motion came on the 21st Nov.

For the motion, 32; Against it; 97.

To enable Recorders of certain Boroughs to hold a Court for the recovery of Small Debts. 14th Feb. Colonel Seale.

To make better Provision for collecting and distributing the Estates of persons found Bankrupt under Commissions and Fiats directed to Country Commissioners. 5th Dec. Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb.

Mr. Mahony.

LAWS OF PROPERTY.

To improve the tenure of Copyhold and Customary Lands. 4th Dec. Att. Gen.

To alter and amend the Law relating to the Mortgages of ships and vessels. 5th Dec.

Mr. G. F. Young.

To enable Tenants for Life of Estates in Ireland to make improvements in their Estates, and to charge the inheritance with a portion of the monies expended in such improvements. 7th Dec.

Mr. Lynch.

To enable Tenants for Life, and Mortgagors in possession of Lands in Ireland to grant

Leases, and to enable Tenants for Life of Lands in Ireland to make exchange, and for giving a summary partition in all cases as to Lands in Ireland. 7th Dec.

Mr. Lynch.

To suspend for three months, from the end of Dec. 1837, the Act passed last Session for amending the law relating to Wills. 11th Dec. Sir E. Sugden.

To enable married women, with the consent of their husbands, to pass their interests in Chattels Personal. 12 Dec.

Mr. Lynch.

To amend the 13 G. 3, for the better cultivation, improvement, and regulation of the Common Arable fields, Wastes and Commons of Pasture in this kingdom. 12 Dec. Lord Worsley.

To amend the 6 & 7 W. 4, for facilitating the inclosure of open and arable fields in England and Wales. 12 Dec.

Lord Worsley.

CRIMINAL LAW.

To abolish Grand Juries. Mr. Pryme.

[This motion came on the 28th November.

Against the Bill - - 196

For it - - - - 26]

To authorize the summary conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs, and Chairmen of Quarter Sessions, to reserve points of Law in Criminal Cases, for the opinions of the Judges. 12th Feb.

Sir E. Wilmot.

That certain offences to which the punishment of Death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel. 14 Dec.

Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes Magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime.

Mr. Barneby.

[This Bill stands for second reading.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "an Act to Amend the Representation of the People of England and Wales. 8Feb. Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the Law for the trial of Contro-

verted Elections, or returns of Members to serve in Parliament. Mr. Buller.

[This Bill has been brought in, and is now in committee.]

JUSTICES OF THE PEACE.

To continue for a limited term all such Commissions of the Peace as were in force at the time of the demise of his late Majesty, and as have not been superseded, determined, or made void during the reign of her present Majesty.

[This bill has passed the Commons.]

MUNICIPAL OFFICERS.

For the relief of persons elected to municipal offices, and entertaining conscientious objections to subscribe the declaration required by the latter part of the 50th section of the Municipal Corporation Act.

[This bill stands for second reading.]

CHANCERY SITTINGS,

After Michaelmas Term, 1837.

Before the Lord Chancellor,

AT LINCOLN'S INN.

Saturday .. Dec. 2	{ The First Seal.—Appeal Motions and Motions.
Monday .. 4	{ Appeals and Causes.
Tuesday .. 5	
Wednesday .. 6	
Thursday .. 7	{ The Second Seal.—Appeal Motions and Motions.
Friday .. 8	{ Appeals and Causes.
Saturday .. 9	
Monday .. 11	
Tuesday .. 12	{ The Third Seal.—Appeal Motions and Motions.
Wednesday .. 13	
Thursday .. 14	
Friday .. 15	{ Appeals and Causes.
Saturday .. 16	
Monday .. 18	
Tuesday .. 19	{ The Fourth Seal.—Appeal Motions and Motions.
Wednesday .. 20	{ Petitions.

Such days as his Lordship sits in the House of Lords on Appeals, excepted.

Before the Vice Chancellor,

AT LINCOLN'S INN.

Monday Nov. 27	{ Motions and Petitions, &c. by order.
Tuesday .. 28	
Wednesday .. 29	
Thursday .. 30	
Friday .. Dec. 1	{ First Seal.—Motions. Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday .. 2	
Monday .. 4	
Tuesday .. 5	
Wednesday .. 6	

Thursday ..	7	Second Seal.—Motions.
Friday ..	8	Pleas, Demurrers, Exceptions, Causes and Further Directions.
Saturday ..	9	
Monday ..	11	
Tuesday ..	12	Third Seal.—Motions.
Wednesday ..	13	
Thursday ..	14	
Friday ..	15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday ..	16	
Monday ..	18	
Tuesday ..	19	Fourth Seal.—Motions.
Wednesday ..	20	Petitions.

On every Friday the Vice Chancellor will hear short Causes and unopposed Petitions.

Rolls.

AT THE ROLLS.

Saturday ..	Dec. 2	Motions.
Monday ..	4	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday ..	5	
Wednesday ..	6	
Thursday ..	7	Motions.
Friday ..	8	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday ..	9	
Monday ..	11	
Tuesday ..	12	Short Causes, and Pleas, Demurrers, Causes, Further Directions, & Exceptions.
Wednesday ..	13	Motions.
Thursday ..	14	Pleas, Demurrers, Causes, Further Directions, & Exceptions.
Friday ..	15	
Saturday ..	16	
Monday ..	18	Motions.
Tuesday ..	19	Petitions in General Paper
Wednesday ..	20	Short Causes.
Thursday ..	21	Remaining Motions, Petitions, & Short Causes, if any.
Friday ..	22	
Saturday ..	23	

Causes, Further Directions, and Petitions by Consent, every Tuesday at the Sitting of the Court.

Exchequer Equity Sittings.

After Michaelmas Term, 1837.

Thursday ..	Nov. 30	Petitions (Peacock v. Rush & Whiting v. Rush) Motions and Exceptions by order, Motions.
Friday ..	Dec. 1	
Saturday ..	2	
Monday ..	4	Causes.
Tuesday ..	5	
Wednesday ..	6	
Thursday ..	7	Petitions and Motions.
Friday ..	8	Further Directions, Exceptions to Reports, Pleas, Demurrers, and Exceptions to Answers.
Monday ..	11	Causes.
Tuesday ..	12	
Wednesday ..	13	
Thursday ..	14	Petitions and Motions.
Friday ..	15	Further Directions, &c.

The Court will take unopposed Petitions and Motions at the Sitting of the Court on Cause Days; and the Sittings will be continued to hear Causes, after the 15th December, if necessary.

COMMON LAW SITTINGS.

Queen's Bench.

After Michaelmas Term, 1837.

MIDDLESEX.	LONDON.
<i>Common Juries.</i>	<i>Common Juries.</i>
Tuesday ... Nov. 28	Wednesday Dec. 6
and daily to	and daily to
Friday Dec. 1	Saturday Dec. 9
inclusive.	inclusive.
<i>Special Juries.</i>	<i>Special Juries.</i>
Saturday Dec. 2	Monday Dec. 11
and daily to	and daily to
Tuesday Dec. 5	Friday Dec. 15
inclusive.	inclusive.

After so many Causes as shall have been appointed for trial in London shall have been disposed of, the Court will return to Middlesex to the trial of Special and Common Juries, and remain there until and upon the 23d December.

No Special Jury Causes beyond those already appointed in Middlesex, will be taken before the return to Middlesex.

Common Pleas.

After Michaelmas Term, 1837.

MIDDLESEX.	
Friday Dec. 1	Special Juries.
and daily to	
Tuesday Dec. 5	
inclusive.	

THE EDITOR'S LETTER BOX.

In answer to a correspondent as to the case of *Stickney v. Sewell*, relating to the responsibility of trustees, reported in the *Legal Observer*, vol. XI, p. 177, we beg to refer to the subsequent report, 1 Myl. & Craig, 8. It appears there is no fixed rule as to how much of the value of houses may safely be lent on mortgage.

A., whose articles of clerkship expire on the 28th April, 1838, may be examined in Easter Term, if he give due notice the day before Hilary Term. In order to be admitted in Easter Term, the notice to the Master must be three days before Hilary:—namely, Saturday the 6th January; for Monday the 8th will not be sufficient. See *Legal Almanac*, p. 3.

We have not yet procured a copy of the instructions from the Secretary of State for the Home Department to the Magistrates, relating to the attendance before them of persons not qualified as attorneys or their authorized clerks to act professionally. We believe that this regulation (which we hope will become general, both in town and country) will tend to suppress a great evil.

The Legal Observer.

SATURDAY, DECEMBER 9, 1837.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HOKAT.

IMPRISONMENT FOR DEBT.

BEFORE the debate took place in the House of Lords, on Tuesday last, on the second reading of this bill, we had heard of the modifications intended to be proposed in the Lord Chancellor's bill, and the general scope of the concessions which will be made by those who have hitherto opposed the general principle of the measure. It appears probable that if the promoters of the abolition of arrest should be satisfied with the modified plan intended to be submitted to Parliament, there is some prospect of the question being settled, at least for a considerable time to come.

The main concession which, we understand, will be offered is, that arrest shall be abolished on *mesne process*, except where the plaintiff can make an affidavit of the defendant's being about to abscond (but without throwing upon him the burthen of proving the grounds of his belief), and except where, from the fraudulent nature of the defendant's conduct, a Judge may deem it right to hold him to bail.

This relief being given to the *debtor*, the next consideration is the better security of the *creditor*, by extending his remedies against the property of the debtor. Here it is proposed that a judgment creditor shall have larger powers than he now possesses, but not to such an extent as comprised in the bill, because some of those powers, it is thought, would greatly prejudice the other creditors, and inflict a needless hardship upon the debtor.

In the next place, where the bill proposes to authorize the seizure and disposal of all kinds of property belonging to the debtor, and to subject him to an examination before a commissioner, as in the case of bankruptcy or insolvency; such extraordinary

powers shall only be put in force for the general benefit of all the creditors, and not for the judgment creditor only.

Such are the principal points of the proposed alteration; and we now proceed to lay before our readers the material parts of the debate on the second reading, which ended in referring the bill to a select committee, consisting of the Lord Chancellor, Lord President, Lord Privy Seal, the Dukes of Richmond and Wellington, the Marquis of Salisbury, the Earl of Devon, Lords Redesdale, Ellenborough, Melbourne, Colchester, Lyndhurst, Wynford, Brougham, Denman, Abinger, and Langdale.

The Lord Chancellor, after some introductory observations, said—

There was in the bill which he had introduced in 1836, a provision which it was thought expedient to omit in the present. It went not only to alter the relative situation of debtor and creditor, as to the power which the creditor should have with reference to the debtor, but it contained a provision which would perhaps to some appear a very good one, but which it was deemed necessary to omit in the bill of last session. He alluded to that part of the former bill which arranged the machinery for enabling parties to make a *cessio bonorum*, and to give up their property to their creditors, as was done under the bankrupt law.

The object of the present bill was strictly confined to this point—to improve the remedy which the creditor had against the debtor, and to relieve the debtor from some of those severities and hardships which the law, as it now stood, enabled the creditor to inflict on him. As the law now stood, an individual was liable to be deprived of his liberty—he was liable to be arrested, if any person made affidavit that such individual owed him a sum above 20*l*. A creditor, or indeed one who was no creditor, might, on making such an affidavit, consign a man to prison. It might be said that the debtor had it in his power to obtain bail. Upon this point it was stated in the report on the subject, that when the

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debtor went into the market and hired bail, it was found that great inconvenience, expense, and sacrifice of moral feeling resulted from his being compelled to go amongst those who made it their business to procure bail. So far the power of the creditor was, in his opinion, greater than it should be.

If the debtor possessed goods and chattels, the creditor might, through the sheriff, judgment being obtained, seize on them to pay his debt; but if his object was to defeat the creditor, he might have horses, carriages, and various other luxuries, and matters might be so managed that the creditor could not touch that property at all. Again, a debtor might have large funded property, but the creditor had at present no means of rendering it available for his claims. The debtor in many of these instances might in fact be a very rich man, but such was the state of the law that the creditor was unable to lay hold of his property, unless it was of a certain description. Now, it was this anomalous state of things that the framers of the bill wished to provide for. The creditor might choose to seize the person of the debtor, and to take his chance of payment by the pressure of imprisonment; but if the debtor were content to suffer imprisonment, then the creditor was left without any remedy.

Though the debtor might be relieved under the Insolvent Debtors' Act, yet, as the law now stood, he could not take the benefit of the act without having been in prison for a certain time—without having been confined for eight weeks—without, for that period, leaving his usual occupation, giving up his employment, and hazarding the total loss of his credit: for his credit must of necessity be greatly, if not irretrievably, impaired, who was known to have been imprisoned for not paying his debts. Thus the law, though it gave this remedy to the debtor, yet attached to it conditions that were extremely oppressive. The individual was separated from his family—he was deprived of the opportunity of earning the means of paying his debt, and certainly, in a moral point of view, he was likely to be in a worse condition after two months' imprisonment in a gaol. A person thus situated might, when arrested, be in a good situation, which though it would not enable him to pay then, might place it in his power to pay hereafter. But if, in consequence of arrest, he lost that situation, and with it the chance of paying the debt, how did the creditor profit by the possession of such a power? It might be supposed that the debtor had friends who would, if he were threatened with imprisonment, hasten forward to relieve him; but was it fair to force individuals by such means to satisfy demands with which they had nothing to do? Again, on the other hand, if the debtor had some property, but not equal to the liquidation of all demands against him, this summary mode of imprisonment might lead to the preference of one person—there would not be an equal distribution of property, but one creditor would be paid at the expense of all the rest. It did, therefore, appear to him, that the arresting individuals upon *mesne*

process, and very frequently upon execution, was a system productive of almost unmixed evil. He admitted that there ought to be, in certain cases where necessity called for it, a power to prevent persons, on proper cause being shewn, from leaving the country, and for placing them in safe custody; but he thought it was extremely wrong that such a power should be granted to an individual merely on his own unsupported oath.

His Lordship, after some further observations on the present state of the law, proceeded to describe the several kinds of property which would be rendered available under the bill to the satisfaction of creditors.

In cases of real property, he said, he could see no reason why the creditor should only receive a moiety of that property, if his debt were larger than such moiety. He could not conceive on what just principle the debtor and creditor were to go halves. In his view of the case, justice required that the whole property should be liable to the debt, and for that the bill provided. Again, there were cases in which the creditor found that the debtor was possessed of a large sum of money, which he could not touch, while the debtor might go on enjoying it and living in splendour. Surely that ought not to be permitted. A debtor might also be in the habit of receiving a considerable annual income from the funds, of which his creditor could not avail himself. Now, he could see no reason whatever, why the remedy of the creditor should be confined to goods and chattels, or why he should not have a remedy against property of every description belonging to his debtor. The bill was therefore framed to meet this defect. By the bill it was proposed that after judgment signed the creditor should have an equitable lien on the lands of the debtor, instead of his being enabled to bring on a sheriff's sale. This was a change which, it must be admitted, could not fail to be advantageous to both parties, for it would enable the creditor to work out the largest possible amount for his own benefit, and therefore for the benefit of the estate generally.

As the law at present stood, the creditor could not reach money in the funds or stock of any description with the facility which he ought to possess. Anything of that sort which was the property of the debtor ought most certainly to be used for the benefit of the creditors generally, at the same time that he fully admitted the difficulty of deciding whether stock held in the name of other parties might or might not be the property of any individual debtor. It might be held by others in trust for him, or by him in trust for others; but if their Lordships would allow the bill to go into committee, he hoped to introduce such clauses as would enable the creditor, not at once certainly, to sell the stock, but to enable him to obtain such an equitable lien as would assist him in working out his claim.

Again, there was another species of property

which the creditor could not succeed in reaching—that was, money, notes, bills, or bonds. It would, of course, be clearly understood that the promoters of the measure did by no means intend to create liens on all sorts of property: there was obviously no intention of requiring that a man should search for judgments before he purchased a hogthead of sugar or a bale of cotton goods; that would be an interference with mercantile interests and convenience, which was not contemplated, and therefore if the original bill were found to contain clauses having such a tendency, they should either be struck out or modified.

He had to state that the bill contained some clauses the object of which was to give a remedy to creditors who might have been deceived by apparent possession of property by the debtor, of which in fact he was the reputed owner. He saw no reason why reputed ownership should not operate generally as it now did in cases of bankruptcy. As the law at present stood, the fact of any man's remaining in prison for debt during a certain specified time was considered to be in law an act of bankruptcy; instead of that test, he proposed now to substitute another—namely, that if a man permitted a judgment debt to remain for a certain time unpaid, or without security given, it should be considered an act of bankruptcy. Looking to the various provisions of the measure, he should say that on the whole the measure could not but prove advantageous to both debtor and creditor; the former it would relieve from the pressure of means process, and from the effects of those revengeful feelings which sometimes govern the conduct of creditors after judgment.

There of course could not be the least doubt that if a debtor gave any grounds for supposing that he intended to abscond, a creditor ought to possess the power of detaining him or causing him to give good and sufficient security. If he happened to be in the country at the time, the creditor must send up to London for a writ, but the power of issuing this writ, which was practically one of *ne exeat*, rested with the creditor in common law, and with the judge in equity. He proposed that in future it should be vested in a justice of the peace, as an authority always at hand, on affidavit made by the creditor. This provision he conceived would be a protection both to debtor and creditor.

Then there was a new provision which he proposed to introduce—namely, that of putting the debtor under examination as to the state of his property and the amount or value of each description of property of which he was possessed, or supposed himself entitled to; this, he observed, would be a new protection to the creditor, for in many cases there was property which he neither knew of nor could reach, and for this purpose the bill would provide that the debtor should deliver in a schedule and be examined before an officer in London or commissioners in the country. No doubt it would be useless to make such a provision without at the same time investing the proper officers with power to enforce it, and to compel an-

swers by commitment. Thus could the property of a fraudulent debtor be in many instances reached. The house would recollect that this was no new provision; that under the Lords' act a similar provision existed, but then it was limited to debts under 300*l.*, while he proposed to make it unlimited, for he saw no reason why a man who owed 3,000*l.* should enjoy immunities which were denied to the debtor for 300*l.* As regards this part of the bill, debtors and creditors were the only parties concerned; it would clearly be a benefit to creditors; debtors had no right to object, and for this simple reason, that they ought not to refuse submitting themselves to an examination; that they ought not to refuse to furnish a description and statement of their property; they were not entitled to set their creditors at defiance, and refuse information, as the law at present allowed them to do.

On the other side of the question, Lord Lyndhurst, after adverting to the progress of the measure during former sessions, and the preponderance of petitions against it, entered on the discussion of the leading provisions of the bill in its present shape. He said—

In the first place, the advocates of the bill told the house and the parties interested, that it would give increased power to the creditor over the lands of the debtor. To that he should feel no objection; but his noble and learned friend on the woolsack had correctly stated that the great majority of those debtors sent to prison were men who owed sums under 30*l.* Now he desired to ask, if persons who went to gaol for such sums were likely to be possessed of interest in land that came within the description of freehold, copyhold, or customary tenures? The persons arrested were generally men who owed very small sums; what could such a provision as the bill contained have to do with them? A debtor might most truly say that the effect of the bill would be to enable him to defeat some of his creditors and to favour others, and that he could alienate his lands. He believed it would be no difficult matter to shew that the bill would have the effect of cheapening the exercise of the power to which he now referred. The debtor, if he found his creditor proceeding against him, could say, "I will create charges upon my estate; I will alienate, and though you should issue a writ of *capias ad satisfaciendum*, I can still defeat you; and I give you notice that I will." The fact was, that the bill did not apply to the subject matter, and that it professed or attempted to deal with things that it could not reach. It professed, or seemed to undertake to give the creditor power over the money, bills, and bonds of the debtor. What could be more movable than the money, bills, or bonds in the possession of a fraudulent debtor? It was perfectly ludicrous to suppose that an act of parliament could reach property of that nature. Surely there were no assets of that description which a creditor could not endorse

the day before judgment was entered up against him. Then came stock in funds. Under the existing law, a man possessing property of this nature, who did not wish to pay his debts, might go to prison and live upon the income of his stock. His learned friend had said he would put an end to all that by making stock seizable. There was one of the additional securities. Now in the first place, debtors to the amount of 30*l.*, being that class of debtors who, as allowed by the noble and learned lord, was the most liable to arrest, were not very often stockholders.

But what might debtors holding property of this kind do under this bill? Why, if it should pass into law in its present form, all they would have to do in case they chose to act fraudulently would be, to sell out their stock, and invest it in foreign securities. They could quit the capital of London, live on the income of their securities in a princely manner on the continent, and set their creditors at defiance. Thus, instead of, under the present law, exchanging the comforts of a mansion in Grosvenor or some other square, and the luxury of a carriage and horses, for the dull confinement of the King's Bench Prison, the debtor, by this bill, had only to change the nature of his stock, and transfer his establishment to the other side of the channel. There was another point. A plaintiff in an action might become a substitute for the defendant, and act as if he were the real plaintiff, by suing in his own name for debts due to the defendant. According to the seventh clause, debts due to judgment debtors were to be vested in the creditor by order of the judge. But suppose the original plaintiff averse from that course of proceeding, and that the defendant in the action succeeded; he (the defendant) would undoubtedly look to the substitute plaintiff for his costs. What creditor would become substitute plaintiff in suits for the recovery of debts due to the defendant, if he were liable to be saddled with the costs? If in the operation of this bill the interests, as was proposed, in the personal property of the judgment debtor should be charged, by order of the judge, with the payment of the amount for which judgment should be obtained, no one in London would venture to purchase a bale of goods without first searching every judge's chamber to see whether their might exist against it any such charge or order. It would seem as if the persons who had framed this bill were not aware that defendants sometimes obtained judgments against plaintiffs. According to the present law, if the defendant succeeded in an action, he could put the plaintiff in prison for his costs; and in such a case how was he to be liberated? The remedies contained in this bill on behalf of the plaintiff did not apply to him. He was left out of the second, out of the sixth, the seventh, eighth, and ninth clauses, as if the defendant never in any instance obtained judgment. Whether this might have occurred through a slip, or been made upon the presumption that plaintiffs were always right, and defendants always wrong, he could not say, but there it was on

the face of the bill. Then as to the power of seizing securities. Suppose a judgment creditor lucky enough to get hold of those securities and recover money on them, how was he to act according to the provisions of this bill? He was to pay himself first, and then hand the difference to the defendant in the original action. Here again the bill proceeded on a presumption similar to the last—viz., that the plaintiff was always rich and right, and the defendant always poor and wrong. The bill empowered the plaintiff to seize securities, and bring actions for the recovery of the sums due on some, and in case he succeeded to pay himself, and then if there were a surplus, to hand it to the unfortunate creditor; but suppose this man, the judgment creditor, to be in need of money for his own purposes, to be pressed perhaps by some of his own creditors, and to allocate that surplus or part of it to his own use, what remedy had the defendant in the original suit?

Then as to the mode of getting evidence. If a person obtained judgment against another, and the defendant did not satisfy such judgment within ten days after it had been entered up, the attorney might call on him to deliver up within fourteen days a schedule, containing a full and perfect account of all his property, whatever its description. If he happened to be a man of large estate, involved in his affairs, whether on these estates there were charges and incumbrances, whether his effects were in possession, reversion, remainder, or expectancy; whether his property were personal or real, the particulars of all, together with the names and residences of his debtors, and those of the witnesses who were to prove the debts, were to be formed into a schedule and delivered up. If, moreover, the defendant did not do so to the satisfaction of the attorney, he might be summoned before the commissioners, and if the commissioners were not satisfied with his answers, they might send him to prison. If one of their Lordships should have the misfortune to be summoned before the commissioners under such circumstances, and those commissioners did not like his answers, or the mode of giving them, they could immediately send him to prison. But mark the dates: judgment might be obtained at the commencement of the long vacation. The time for making these disclosures was not to be extended beyond six weeks. In case the party were consigned to a prison, a considerable time might elapse before an application for a new trial could be made, and supposing at the ensuing term a new trial to be obtained, and the opinion of the jury to be that the original verdict was a most scandalous one, they had in the mean time a disclosure of the affairs of this unhappy person. By the Insolvent Debtors' Act, if the party seeking the benefit of it committed a fraud, or had done that which was not consistent with justice, the commissioners could remand him; and persons were remanded for 3, 6, 9, and sometimes 12 months, on account of frauds proved against them. By the operation of this bill,

all those persons were to be immediately liberated. Was that the intention of the framers of this bill? Whether or no, such would be undoubtedly the operation of it.

His Lordship then proceeded to consider the question of abolishing arrest on mesne process.

Arrest before judgment (he observed) was entirely an *ex parte* proceeding. The plaintiff, without being obliged to go before any tribunal, or procure the authority of a judge, could, upon the affidavit of his clerk that he (the clerk) believed the defendant to be indebted to his master in a certain amount, have the defendant arrested and sent to prison. Nothing could be more harsh than that: but what made it peculiarly harsh was, that although the defendant should have the clearest case possible, he was not permitted to show it for the purpose of preventing the arrest or of procuring his discharge from custody. The plaintiff, consequently, had the game entirely in his own hands, and certainly nothing could be more harsh than that, at least at the first view of it. But then it was said that this power was justifiable. He did not assent to that doctrine. They should not confer a power capable of being, or liable to be, abused, unless in cases of extreme necessity. The question was, whether such necessity existed in this case, and how did it appear that this power had been abused? He did not mean to say that it had been abused by respectable tradesmen or solicitors, but still it had been abused. The common law commissioners had stated in their report instances of abuse of the most grievous and oppressive kind that had occurred in the inferior walks of life; and when they found persons of that class possessing such a power over those who were at their mercy, he would ask whether it was not and would not be made use of for the purpose of extorting more than was due, for the purposes also of vexation and of vengeance? A multitude of instances might occur, and no doubt had occurred, without being made public; and unless it could be shown that these powers were absolutely necessary, they ought not to be granted. There was not a commercial country in Europe in which this power existed except in England. It did not exist in Scotland—at least not to the same extent. It did not exist in the Low Countries, in the commercial towns of Holland. It did not exist in France, except under peculiar circumstances, and even then modified to a certain extent. It did not appear to him, then, that there was any great necessity for it. Still he was ready to admit, that when the business of a country had been for a long period carried on under one particular system, and when creditors had built and acted upon that system, the question whether or not the powers should be suddenly abrogated, deserved and demanded their utmost attention and consideration. He did not mean to say that they should not be abrogated, but that the question required great consideration. Many persons had given credit upon the foundation of this

power, to whom, if it were removed without substituting an equivalent, they would be doing an injustice. On the other hand, he should state the advantages arising from the existence of this power. There was no doubt that it had an advantageous effect in rendering persons cautious of incurring debts. He did not mean to say it had that effect upon men of all characters and turns of mind, but with the public at large it certainly acted as a restraint, and rendered them more cautious than they otherwise would be of running in debt. Again, let them see how it operated beneficially as regarded the tradesman. If a man could pay his debts or had it in his power to procure the payment of them, but delayed doing so, this power could be made available, but still without this power they would be paid. It was useful then to accelerate payment; it was a convenient and easy mode of compelling prompt payment from those who had the means of payment, and would avoid or postpone it. But with respect to those who had not the means of payment or could not procure payment, it was altogether useless, for the moment a process was issued against a debtor so circumstanced, he either absconded or took the benefit of the Insolvent Act. This power then formed a security, a beneficial security, to the tradesman, inasmuch as it enabled him to obtain payment, without going through all the details of a court of justice, from those persons who were either capable of paying, or of procuring means to pay. His present impression was, that this power required some way or other to be modified. But they should give to it the deepest consideration, the most minute inquiry, and ought not by any means suddenly to alter or abrogate it.

With respect to arrest after judgment, his Lordship said the case was different.

In that case the question had been heard and decided, and the amount ascertained by a competent tribunal. As he had referred to the law of foreign countries in the first case, he would say respecting this, that there was not a country in Europe in which the power of arrest for debt after judgment did not exist; but then let them see how it worked, and whether there was any great objection to it. If a party had visible property, a writ was never issued, and for most obvious reasons. After taking the person of the debtor you cannot take his goods, and therefore wherever there was tangible property it was seized in preference to the person. But in cases where there was property not visible, then this power of arrest was of great consequence, because it compelled the defendant to disclose it or remain in prison; but if this bill passed into a law, stating, as it did, that a debtor shall not be arrested after judgment, what would happen? Why, the defendant would be quite at his ease. He might say to the creditor "Find my property if you can; I shall not assist you; on the contrary, I shall throw every obstacle I can in your way to prevent your arriving at a knowledge of its nature or locality." Therefore, he

said it was of the greatest importance that the exercise of this power after judgment should be retained.

What he proposed to do was, and those whom he had consulted were of the same opinion, to allow the bill to be read a second time; and, with a view to give every possible consideration to a measure so important in principle, so extensive in its operation, and of so much interest to the trading community at large, to let it go before a select committee of their Lordships' house. Those complicated clauses which his noble and learned friend had referred to would there receive that consideration which he was sure their Lordships would at once acknowledge to be necessary. The difference of opinion amongst the commissioners upon the general principle of the bill was another reason for their referring it to a committee: and here he would request such of their Lordships as might not have perused the opinions of that able and discreet lawyer Mr. Serjeant Stephen, to do so, if only in justice to that gentleman. There had been as yet no committee of that house on this bill. A committee of the House of Commons had sat upon it; and, considering the nature and importance of the subject, ought not their Lordships to inquire for themselves? If it went to a select committee of the other house, why not go to one of that house? particularly as they had means of inquiry much superior to those possessed by the House of Commons.

Lord Brougham said—

His noble and learned friend had gone through the provisions of this bill, in many of which he agreed. He entirely agreed with him as to the remedy by *elegit*, but he did not think the power over stock was sufficiently well fenced by proper enactments. Could any thing be more mortifying to an honest tradesman than to see his debtor squandering in prison what belonged to him, and for want of which he was suffering great loss? The power over stock was the principal advantage given to the creditor as a substitute for arrest. With regard to the subject of arrest, it was found that in cases of process by which a man's body could not be arrested, somewhere above one-half never led even to the first step of defence, that of an appearance, but were settled. Such had been the result of the returns, and he mentioned it to shew of how little benefit was the power of arrest on *mesne* process. As to the abolition of arrest for debt generally, it was true that some tradesmen had formed a very unfavourable opinion of that project; and in their evidence before the parliamentary committee their opinions were strongly recorded. He remembered a very remarkable instance of this description, when, although the evidence of the individual was unfavourable to the abolition, some of the facts adduced by him were strongly in its favour. A very great retail grocer in London, one who had transactions so vast as to turn over a sum exceeding 200,000*l.* on the average in the course of each year, was examined before the committee, and

gave expression to an opinion favourable to the arrest for debt, which he held to be a very beneficial institution. But the inevitable result of certain facts deposed to by him in his further examination was, that if all the sums of money were taken together which that individual had paid in the course of any given year in the shape of legal expenses incurred by exercising the process of arrest for debt upon different debtors, and in all kinds of circumstances, and if this amount were set over against the sums which he had received in cases where the process was found to be efficient in producing any fruits at all, the sum of money paid away by him, without receiving one farthing in return, was equal to the entire sum of money which was the fruit of all the cases where the arrest for debt had been productive of any beneficial effect. This fact was, as he (Lord Brougham) conceived, calculated to shed at once a broad and clear light upon the subject, and to demonstrate that there was something wrong in the principle upon which the law of arrest proceeded.

Lord Wynford stated that—

The principle on which he went was this—he would not allow any man to be deprived of his liberty, if possible, on *mesne* process. He admitted that arrests on *mesne* process were frequently the result of passion: an angry man did not look so much to the security of his property, as to the gratification of his wrath, and the exercise of the power given him by the law very frequently defeated its own object. He agreed, then, that arrest on *mesne* process ought to be avoided, except in cases when it was absolutely necessary. He would not allow a man to be his own judge, and arrest another in a fit of passion, but let him lay affidavits before a judge, upon which the judge might decide whether he thought the facts disclosed were sufficient to warrant an arrest. He thought also that this power should be extended to the plaintiff in an action commenced by serviceable process, when he had good cause to believe that the defendant was going abroad, although he had not arrested him in the first instance. He was quite of the opinion that all property belonging to the debtor ought to be subject to execution in some way or other. But to effect this object the bill took a new course, and in his opinion a very wild course. The application of a very simple remedy would remove the necessity for all these clauses in the bill. They had only to extend the Lords' Act to all descriptions of debts, and every purpose of these parts of the bill would be answered. That was an old remedy, and one which had been recommended by every one of the five commissioners. He had on a former occasion attempted to carry such a measure into effect, but he was then defeated, though he hoped that would not be his fortune now. He had stated that he was quite ready to abolish in all cases, except where absolutely necessary, arrest on *mesne* process: but he thought that after judgment, execution against the person should still be enforced. If a man

were at large, there would be no inducement to him to give up his property, and he would frequently be tempted to conceal it; but if the creditor had the power of giving him into custody, he would be willing to give up his goods to procure his liberation. With respect to the change introduced by the bill into the law of execution by *elegit*, he must observe that under the old law the tenant by *elegit* took half the profits of the land, but it was now proposed that he should have the whole. Under the old law, the tenant by *elegit* might take the land to be extended, so that the profits went immediately in satisfaction of his debt, and he continued in possession till the debt was paid. Now, however, he was to have the rents and profits of the whole, and was to be placed in the agreeable situation (the most agreeable in which a man could be) of accounting to the Court of Queen's Bench for all he received till the estate could be sold. Now, with such a state of things, a man who had a judgment for 1,000*l.* might seize upon the estates of any noble lord in that house, though the rents and profits might amount to perhaps 40,000*l.* a year. The tenant by *elegit* would soon change places with his former debtor, and might, if he felt so disposed, soon cross the channel with the proceeds of the estate, of which he had in this manner come into possession. It did appear to him that a more wild scheme than this, for making compensation to creditors, never was devised. He strongly recommended their Lordships rather to have recourse to the wise old plan of calling on the debtor to deliver up all his property, to be applied to the benefit of the creditor, and then these clauses would in all cases be rendered unnecessary. Another part of the bill which he did not like was that which related to the functions to be exercised by the Commissioners of Bankruptcy. Those gentlemen were to be taken from their own court, in which important business was always pending, and all round London, at least, they were to be the examiners under this bill. He had no doubt that the business of this court was done extremely well, but the business was equally well done in another court, the Insolvent Debtors' Court, and this examination would be much better done by the Commissioners of Insolvents than by the Commissioners of Bankruptcy.

Lord Denman, amongst other observations, said—

The party arrested on *mesne* process was frequently ruined for life, and he was sure to be irritated for life, and under the influence of such feelings would refuse the satisfaction to a creditor which he would have given him if he had not cast him into prison. He wished, therefore to see arrest on *mesne* process entirely discontinued in this free and enlightened country. It was dreadful to think how small were the sums for which persons were arrested. Four-fifths of the whole number of persons arrested were held to bail for sums under 80*l.* There was yet one other consideration—*viz.*,

that the unfortunate persons who were subject to arrest were by those means not only exposed to increased and ruinous expense, but were placed at the mercy of the low practitioners of the law, who were fully capable of pushing their advantages as far as the law would permit, without the smallest regard to the sufferings of the victims. He believed that if they were now prepared to read the bill a second time, and afterwards to take it into consideration in a committee upstairs, that the principal difficulty had been surmounted, and that imprisonment for debt would be abolished. He trusted that in committee some substitute might be discovered for arrest, which would give effectual means for the recovery of a debt; but he might now venture to consider that the principle of the bill itself was carried and adopted by their Lordships' house. He confessed that he looked with jealousy on an arrest of any sort founded on *ex parte* statements. He did not like to see any man have his liberty restrained without an application to a court of justice. He trusted, that going as they would do immediately into the consideration of the respective clauses of the bill, a substitute might be found for the power of arrest, which would spare the liberty of the subject, and at the same time one which would devise all the securities for recovering his debt which the creditor could receive, although, of course, securities from a person in the supposed circumstances of the debtor could not always be very perfect.

Lord Abinger did not propose to go through the details, but he thought that this bill was erroneously entitled. It was called a bill to abolish imprisonment for debt in certain cases; but he thought it might be much more properly called a bill to add to the duties of the Commissioners of Bankruptcy, to increase their emoluments, and to raise a fund for that purpose. He was, however, ready to lend his best assistance in carrying out a Bill for the Abolition of Imprisonment for Debt, and to make such a measure perfect.

The Duke of Wellington consented to a select committee, in the hope that some security would be afforded to the creditors of this country for the recovery of their debts other than by personal arrest. He hoped this bill would come out of the committee affording some satisfactory security to the country in that respect. If it did so come out of the committee, he would consent to go through the other stages of the bill; but, if it did not give that security, he should certainly oppose all further proceeding with the measure. He agreed in many of the arguments advanced by the noble and learned lord opposite. He entirely agreed with him that one of the causes of debts being incurred in the country was, in a great degree, the power which creditors at present possessed to arrest their debtors upon *mesne process*; and he still further believed that it was the facility which was thus given of obtaining credit which had been the

cause of the great mercantile prosperity of the country. The enormous transactions upon credit in this country were such, that both individuals and the public generally required further means of recovering debts than existed in other countries. Under these circumstances he entreated their lordships not to suppose that he gave way in this matter from his feelings, and on that account to put an end to a system which he admitted, in some instances, had been abused; but he gave way with a view seriously to look into the subject, and see whether, instead of arrest, some efficient substitute could not be found which would afford good security to the commercial interests of the country.

The select committee was then agreed to.

PRACTICAL POINTS OF GENERAL INTEREST.

FUNERAL EXPENSES.

In our Ninth Volume, p. 386, we have stated the law as to the allowance to be made to an executor for funeral expenses. We now add the following case, in which a defendant, before taking out letters of administration, sanctioned an expensive funeral, which a relation had ordered for the deceased, and it was held that the defendant was liable, in the capacity of administrator, for this expense. On a motion for a new trial, *Tindal, C. J.* said—

“If this case was properly left to the jury, there is no reason for disturbing the verdict, the sum recovered being under 20*l.*, and it appears to us that there *was* evidence to go to the jury. This is an action for work and labour performed in conducting a funeral, and for hearses, coaches, and horses, supplied on the occasion by the plaintiff, at the request of the defendant, administrator of the deceased. The defendant puts in a plea that he has brought 53*l.* into court, to be paid to the plaintiff, and that he ought not further to maintain this action. I am unable to perceive any difference between the effect of this plea, and of payment into court under a rule, according to the old practice. The payment under the rule was directed against the further maintenance of the action, and when the present plea concludes against the further maintenance of the action, it leaves the question as to further damages the same as under the old plea of non-assumpsit, and payment into court under a rule. The defendant therefore is not bound by the admission, beyond the 53*l.* paid into court, and it is open to him to make any objections to the recovery of further damages. But this action is brought against him in his character of administrator, which is admitted by the course of the pleadings, and the question is, whether the defendant in that character has

ratified the order given for burying the deceased at a distance from her residence. I think the letter of the 24th of November, 1833, amounts to such a ratification. It has been objected, first, that at the time he wrote that letter, it does not appear the defendant knew in what way the funeral had been performed; and secondly, that he could not then ratify the order for the funeral in the character of administrator, because he did not take out administration till long afterwards. Now, the letter was written on a Saturday, the defendant having arrived in London on the preceding Tuesday, at which time the funeral had been performed; and I cannot help collecting that the writer must have been told of what had taken place as to the funeral: he says, ‘I found your kind letter, and one from my uncle, inclosing a copy of my poor mother’s will. I am much obliged to you and to him for all you have done, which was certainly the best, and all that could be done. Would you or Sir Bethell have the kindness to do, what I am told must be done sooner or later, send some one to the house to take a list of all property whatsoever, in and out of doors, which is not sealed up, with a view to its future valuation.’ The circumstance and tone of the letter is that of a man who expected to be personal representative; why else should he speak of breaking seals, and making an inventory? Accordingly, a year after, he does take out administration; and it is reasonable that any effect of the letter should refer to his powers in the capacity of administrator. But it is said, that as he was not administrator at the time, the letter cannot have that effect. It is clear, however, that a creditor who assents before administration to a given disposition of the intestate’s effects, is bound by it after administration. Now, if a creditor is bound after administration, by an assent given before administration to a particular disposition of the intestate’s effects, why should not the administrator after administration be equally bound by what he undertook before? After paying money into court in the capacity of administrator, he must be supposed to have sanctioned as administrator the funeral of the intestate; the question is confined to the amount that ought to be paid. *Lucy v. Walrod*, 3 Bing. 841, N. S.

THE LAW OF ATTORNEYS.

COSTS OF LETTERS.

The following case is of some importance to many of our readers:—

Davison moved for a rule to shew cause why the master should not review his taxation, and allow to the plaintiff or his attorney the costs of letters written, and the postage of letters paid by him before the commencement of the action. After the cause had proceeded as far as the declaration, an order was made by consent that proceedings should be stayed on payment of debt and costs. Before the writ

was sued out, fifteen letters, requiring a settlement of the demand, had been written by the plaintiff's attorney, and he had received fourteen letters from the defendant, for thirteen of which he had paid the postage. The defendant had requested that time should be given, and every accommodation was shewn by the plaintiff's attorney. The Master refused to allow the costs of more than one letter.

Lord Abinger, C. B.—The usual practise is to allow for one letter only; if more were allowed, there might be two letters a day sent by the two-penny post.

Parke, B.—It is much better to abide by the general rule. If this application were allowed, the next attempt would be to introduce a letter every day.

Rule refused.—*Capel v. Staines*, 5 Dowl. 770.

NEW BILLS IN PARLIAMENT.

CUSTODY OF INSANE PERSONS.

This bill recites that by 39 & 40 Geo. 3, c. 94, intitled, "An act for the safe custody of Insane Persons charged with offences," it was amongst other things enacted, "that if any person should be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any of his Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be hailed, except by two justices of the peace, one whereof shall be the justice who has issued such warrant, or by the Court of General Quarter Sessions, or by one of the Judges of his Majesty's Courts in Westminster Hall, or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal;" and it being expedient to repeal so much of the act as before recited, and to make other provisions for the safe custody of such persons: It is proposed to enact as follows:

1. That so much of the act as before recited be repealed.

2. That in all cases where any person shall be in custody under or by virtue of any warrant for commitment made or issued by any of her Majesty's justices of the peace, under the repealed provisions of 39 & 40 Geo. 3, c. 94, and if at any time any person shall be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime, for which if committed, such person would be liable to be indicted, two justices of the peace of the county, city, borough or place where such person shall be so kept in custody or apprehended may call to their assistance a physician, surgeon or apothecary; and if upon view and examination of the said person so in custody or apprehended, or from other proof, the said

justices shall be satisfied that such person is insane, or a dangerous idiot, the said justices, if they shall so think fit, by an order under their hands and seals, directed to the keeper of the gaol or house of correction, if in custody at the time of passing this act, or if hereafter apprehended, to the constable or overseers of the poor of the parish or place where such person shall be apprehended, shall cause the said person to be conveyed to and placed in some county lunatic asylum, or to some public hospital, or some house duly licensed for the reception of insane persons; and the said justices may inquire into and ascertain by the best legal evidence that can be procured under the circumstances, of personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement, and the circumstances of such person, and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, such two justices may make an order under their hands and seals upon the overseers or churchwardens of such parish, township or place, where they adjudge him or her to be legally settled, to pay all reasonable charges of examining such person, and conveying him or her to such county lunatic asylum, public hospital, or licensed house, and to pay such weekly sum for his or her maintenance, in such place of custody, as they or any two justices shall by writing under their hands from time to time direct; and where such place of settlement cannot be ascertained such order shall be made upon the treasurer of the county, city, borough or place where such person shall have been in custody or apprehended; but if it shall appear that such person is possessed of property more than sufficient to maintain his or her family, then such justices shall, by order under their hands and seals, direct the overseers or churchwardens of any parish or place where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rent of the lands and tenements of such person, as is necessary to pay the charges of examination, conveyance, maintenance, clothing, medicine and care of such insane person or dangerous idiot, accounting for the same at the next quarter sessions; such charges being first proved to the satisfaction of such justices, and the amount thereof being set forth in such order: provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from taking such insane person or dangerous idiot under their own care and protection: provided that the churchwardens and overseers of the parish in which the justices, or major part of them, shall adjudge any insane person or dangerous idiot to be settled, may appeal against such order to the general quarter sessions of the peace to be holden for the county where such order shall be made, in like manner and under like restrictions and regulations as against any order of removal, giving reasonable notice thereof to the clerk of the peace of

such county, who shall be respondent in such appeal; which appeal the justices of the peace assembled at the general quarter sessions are hereby authorized and empowered to hear and determine, in the same manner as appeals against orders of removal are now heard and determined.

3. If upon examination it shall appear to the physician, surgeon or apothecary present at the examination, that any person in custody at the time of passing this act as aforesaid, is not an insane person or a dangerous idiot, and that such person may be suffered to go at large with safety, such medical person is hereby required to give a certificate to that effect, signed by him, to such justices, who are hereby required to transmit the same forthwith to her Majesty's principal Secretary of State for the Home Department, who, if he shall so think fit, shall order the liberation of such person from custody.

HIGHWAY-RATES AND TURNPIKES.

This bill recites that the inhabitants of parishes, townships and places in which turnpike roads are situated were heretofore bound to maintain and keep such roads in repair, and were chargeable thereunto by the name of statute duty, or with a composition in money to be paid instead thereof; and that by the 5 & 6 W. 4. c. 50, divers statutes, passed in the reign of King George the Third relating to the performance of statute duty, were repealed, with the intent that statute duty should be thereby altogether abolished; but it hath been doubted whether the provisions of the 5 & 6 W. 4. c. 50, are of force sufficient to take away the obligation to do statute labour upon turnpike roads, and it is expedient that such doubts be removed:

And reciting also that the revenues of some turnpike roads are so unequal to the charge and maintenance of such roads, when deprived of the aid heretofore derived from statute duty, that it is necessary that some additional provision be made for such roads for a limited period; it is therefore proposed to be declared and enacted,—

1. That no person be liable to perform any statute labour upon any turnpike road in England, or to pay any composition in money instead thereof.

2. That the justices at any special sessions for the highways, upon information exhibited before them by the clerk or treasurer of any turnpike trust that the funds of the said trust are wholly insufficient for the repair of the turnpike road within any parish (notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions), may examine the state of the revenues and debts of such turnpike trust, and inquire into the state and condition of the repairs of the roads within the same, and also ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike

road; and if after such examination it shall appear to the said justices necessary or expedient, for the purposes of any turnpike road, so to do, then to adjudge and order what portion (if any) of the rate or assessment, levied or to be levied by virtue of the said recited act, shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officer appointed by them in that behalf; such money to be wholly laid out in the actual repair of such part of such turnpike road as lies within the parish from which it was received.

3. That if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by the said recited act authorized to be levied.

4. That if any person shall think himself aggrieved by any order, judgment or determination made, or by any matter or thing done by any justices of the peace, at any such special sessions, in pursuance of this act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, division or place wherein the cause of such complaint shall arise, such appellant first giving to such justices ten days' notice in writing of such appeal, together with a statement in writing of the grounds of such appeal within six days after such order, judgment, or determination, shall be so made or given as aforesaid, who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively, touching the matter of such appeal, to the said justices at their general or quarter sessions aforesaid; and that in case of such appeal, the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall, for the purpose of determining such appeal, impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, whose verdict shall be final and conclusive to all intents and purposes; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited act; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form: provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination, or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in

manner aforesaid: provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid; nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

SUPERIOR COURTS.

Vice Chancellor's Court.

SOLICITOR'S LIEN ON CLIENT'S PAPERS.

A solicitor refused to proceed in a cause, unless the costs incurred in it, and in an action at law, were first paid. He was ordered to deliver the papers in the cause to the solicitor appointed by the client to the cause, subject to his lien for his costs, without any direction as to the taxation of them.

The plaintiff's petition stated (among other things) that he had been arrested at the suit of Mr. B., his solicitor in the cause, for a balance of costs in this and other causes. That a few days before the arrest, the solicitor wrote a letter to the petitioner, stating that he had no funds for carrying on the plaintiff's suit, and that he would not prosecute it any further unless the balance of the account were paid. That the plaintiff thereupon employed Mr. G. to conduct his suit, and G. wrote to B., asking for the briefs and other papers in the cause, for the purpose of carrying on the petitioner's suit in this Court, and that he would return them after the hearing of the cause, and that the giving of them would be without prejudice to any lien B. might have on them. B. refused to give up the papers, but informed G. that the petitioner or his solicitor might go to his (B.'s) office, and copy the papers there, or that if the petitioner would pay the bill of costs, B. would go on with the suit.

Mr. Knight Bruce, for the petitioner, who was the plaintiff in the suit, after stating the facts, said the main question was, whether the proffered inspection of the papers was all that the plaintiff was entitled to, or whether he had not, under the circumstances, a right to have them delivered up to his new solicitor, subject to the lien of B. He had no right to interrupt the progress of the suit, by withholding the papers. He had been supplied with every specific sum of money that he asked, but he made an indefinite demand for payment of charges which were subject to taxation. The papers were necessary in order to proceed with the cause, and the petitioner ought to have the use of them, without being put to the expense of taking copies. He trusted the Court would make such an order as Lord Eldon made in the case of *Colegrave v. Manley*.^a

Mr. Jacob and Mr. Addis opposed the petition. In the case of *Commerell v. Poynton*,^b where the solicitor discharged himself, Lord Eldon refused to order the papers to be delivered over to the new solicitor, upon his undertaking, before payment, but directed that

he should have inspection of them. In the present case, Mr. B. did not discharge himself, but required his just demands to be paid, in order to enable him to proceed with the plaintiff's cause. A solicitor is entitled to ask payment for past charges, and money for future proceedings. The petitioner here, not only refused to pay for past charges, but used offensive language to his solicitor, which would well justify the solicitor to withdraw from the conduct of the suit. But Mr. B. did not voluntarily withdraw from the suit, and the case therefore did not come within *Commerell v. Poynton*. In *Colegrave v. Manley*, the client submitted to pay the costs as soon as taxed; but this petitioner made no offer of payment, although he did not deny that he was in arrear of payment. It did not appear that the petitioner was able to pay. The case fell within the principle laid down by Sir John Leach, in *Moir v. Mudie*,^c where an order was made for inspection, and not for the delivery of the papers. This in fact was the case of a client discharging his solicitor. *Steele v. Scott*.^d

His Honor the Vice Chancellor.—The order in *Colegrave v. Manley* was made on the ground that the solicitor there discharged his client. The question is, whether the facts of this case warrant a like order, and whether such order is to be made with costs against the solicitor, as the petitioner prays. The solicitor, in his affidavit, stated that in 1835 the plaintiff wrote him an angry and offensive letter. If a solicitor cannot communicate with a client without subjecting himself to unpleasantness from the client's temper, the latter, in effect, discharges himself. But in this case, notwithstanding the letter, the solicitor still went on with the cause to the end of the year 1835. He appeared to ask too much when he demanded payment of his whole costs in the suit, as well as in the action at law, which he had conducted for the plaintiff; and certainly he was not justified in making the payment of costs to be incurred a condition of his proceeding with the suit. He afterwards (in March 1836) delivered his bill of costs; and in the month of May following, he sent an intimation that he should not proceed unless his demands of the preceding February—of which he did not send the bill till March—were complied with. It was difficult to say, after that intimation, that the solicitor did not discharge himself. He did not deny in his affidavits that the plaintiff paid him every specific sum demanded of him for the purpose of the suit. Under these circumstances, an order, not only for inspection, but for delivery of the papers to the new solicitor, subject to Mr. B.'s lien on them, should be made, without, however, adding any thing thereto about taxation of the costs, in respect to which the parties may take such proceedings as they may be advised.

The order was accordingly made, with costs of the petition against Mr. B.

Healup v. Metcalfe, at Westminster, Nov. 13, 1837.

^c 1 Sim. & Stu. 282.

^d 2 Hogan, 141, (Irish Rep.)

^a Turn. & Russ. 400.

^b 1 Swans. 1.

Queen's Bench.

[Before the Four Judges.]

BAIL BOND.

The Court will set aside proceedings on a bail bond, and order the bond itself to be delivered up to be cancelled, where it has been taken in pursuance of a wrong indorsement on the writ, such indorsement requiring bail to be taken for a greater amount than the sum named in the writ.

The *Attorney General* shewed cause against a rule for setting aside the proceedings on the bail bond given in this case, and delivering up the bail bond to be cancelled. The affidavit on which the rule was obtained stated that the affidavit of debt was for 175*l.* that the writ was issued for that sum, but that the indorsement on the writ was for 179*l.* with interest thereon from the 11th of February, 1832, together with —1. the amount of costs, and on payment thereof within four days, the proceedings will be stayed." The ground of the application was the difference between the sum mentioned in the writ, and the sum indorsed upon it for bail. It is clear that this is not a ground for delivering up the bail bond. The indorsement is not material, or if it is, this is not the proper course to be pursued to relieve the defendant from any inconvenience he may have suffered. The indorsement on the writ was formerly considered to be merely directory, but it is said that the rules founded on the 2 Wm. 4, c. 39, have made the indorsement a material part of the proceedings. That cannot be so, where the indorsement contradicts the writ, as it does here. The defendant need not have given bail for a higher sum than was mentioned in the writ, for that was the authority for the officer. The defendant here has mistaken his course: he ought to have applied to be discharged without giving a bail bond; but having given it, he cannot now apply to set it aside.

Mr. *Humfrey*, in support of the rule.—All the text writers on practice treat the indorsement on the writ, as material. In *Archbold*,^a where all the authorities are quoted, it is said, "the sum specified must be indorsed on the back of the writ, and the sheriff must take bail for that amount, and no more." The practice thus described was formerly, perhaps, only directory, but now by the new rules^b it is mandatory. By one of these rules it is provided, "that if the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof, any of the matters required by the said act (2 Wm. 4, c. 39, s. 12,) to be by him inserted therein, or indorsed thereon, such writ or copy thereof, shall not on that account be held void, but it may be set aside as irregular, upon application to be made to any court out of which the same shall issue, or to any Judge." This is an indorsement required by the statute, and is, therefore, within the terms of the rule. [Mr. Justice *Patteson*.—There was no omission

here.] No; there was something worse, or else it might be argued that there was an omission to insert the proper sum, and the effect of allowing the indorsement here to be good, would be to put the defendant under all the disadvantages of being called on for an increased amount of bail—disadvantages against which it has always been the wish of the courts to protect a person in his situation.

Per Curiam.—The practice adopted here would have been as wrong before the late statute, as it is now. The present case is a hard one, but the provision is in the operative part of the statute, and must be strictly followed.

Rule absolute.—*Cooke v. Cooper*, M. T. 1837. Q. B. F. J.

ATTORNEY.—ARTICLES OF CLERKSHIP.

Where an attorney has represented that articles of clerkship, made on behalf of a young man entrusted to his care and tuition, may be stamped at any time, and has undertaken to see every thing with respect to them done speedily and properly, if he neglects to get the articles of clerkship stamped within the time required by law, that court will grant a rule calling on him to repay the premium received, and to go before the master, who may direct what is proper to be done between the parties.

The *Attorney General* moved for a rule to shew cause, why an attorney of the court should not repay a sum of 200*l.* which he had received from a person, for taking the son of that person as an articulated clerk, and why it should not be referred to the Master to say what should be done between the parties. The applicant had engaged to put his son into the office of the attorney, and was to pay 200*l.* as a premium. The articles were drawn out, and the attorney then said that they need not be stamped at the time, but that the stamp might be affixed to them at any time afterwards, and that he would take care that all was done speedily and properly. When six months had expired, the applicant became anxious about the articles, and spoke to a friend, who wrote to the attorney on the subject, and received for answer that all was right. It now turned out, that the articles never had been stamped; and by a recent Act of Parliament,^a they were on that account void, in consequence of not having been stamped within six months after they were made. In addition to this, it appeared from the affidavits that the young gentleman seldom saw his master, who was employed elsewhere.

Lord *Denman*, C. J.—You may have a rule, and the parties may go before the Master immediately, if they think proper.

Rule granted.—*Anon.*, M. T. 1837. Q. B. F. J.

^a Practice 123.

^b Mich. Term., 3 Wm. 4, c. 10.

^a 7 Geo. 4, c. 44, s. 4.

Queen's Bench Practice Court.**PRISONER.—WARRANT OF ATTORNEY.**

It is incumbent on a prisoner, desirous of avoiding a warrant of attorney, given by him while in custody, on the ground of an attorney not being present on his behalf, to shew by his affidavit in support of his application, that he is in custody on mesne process; and it is not necessary that the plaintiff should shew by his affidavit that the defendant is not in such custody.

An application was made in this case by *Dowling*, and a rule obtained calling on the plaintiff to shew cause why the judgment signed in this case, and the execution issued, should not be set aside on the ground of a defect in the warrant of attorney on which those proceedings had been had. The defect complained of was, that the defendant, who had given the warrant of attorney, was a prisoner at the time of executing it, and no attorney had witnessed the execution on behalf of the defendant, pursuant to the rule of Hilary Term, 2 W. 4.

Platt and Hoggins, who appeared to shew cause, contended that by the very language of that rule, its operation was confined to prisoners in custody on mesne process, but it did not appear from the affidavits in support of the rule, that the defendant was in custody on mesne process, although it was shewn that he was a prisoner. The mere fact of his being a prisoner would not entitle him to the benefit of the rule.

Dowling, in support of the rule, contended, that the defendant being shewn to be a prisoner, it was incumbent on the plaintiff to shew that the custody in which he was, was in its nature such as to take the instrument out of the operation of the general Rule of Court.

Coleridge, J., was of opinion that the burthen of proof on that point was imposed on the defendant, who sought to avail himself of the rule in order to set aside his own act.

Rule discharged with costs.—*Lewis v. Gomperts*, M. T. 1837. Q. B. P. C.

Common Pleas.**IRREGULARITY.—LACHES.**

A defendant having been arrested on the 12th of October, and there being no proof of any application being made to the court on the ground of an irregularity in the copy of the writ of capias served on him at the time of his arrest, until the 2nd of November: held too late.

Semble, that a mistake in stating the writ of capias to have been served in the reign of William the Fourth, instead of in that of Victoria, in the copy served on the defendant at the time of his arrest, is only an irregularity, and does not vitiate the arrest itself.

W. H. Watson shewed cause against a rule which had been obtained by *Wilde*, Serjeant, which called on the plaintiff to shew cause why the copy of the writ of capias, delivered

to the defendant in this case, should not be set aside for irregularity, and why the defendant should not be discharged out of custody on his entering a common appearance, and why the plaintiff should not pay the defendant his costs attendant upon the proceedings.

It appeared that the defendant had been arrested at the suit of the plaintiff on the 12th of October, and the objection was now taken to the copy of the writ, which was then served upon him, and which purported to have been issued in the reign of William the Fourth, instead of that of Victoria. It was submitted, however, that this was an exceedingly technical objection, and would not receive any encouragement from the court. The defendant was not prejudiced by the copy of the writ being informal, and he did not take the trouble to inquire whether the original writ, or whether the copy served on the sheriff's officer, was regular. An affidavit was now produced, in which it was sworn that the plaintiff's attorney sued out a regular writ of capias, and delivered an exact copy of it to the sheriff's officer, and having done so, he had completed all the duties required of him by the statute. The mistake committed by the assistant of the sheriff's officer, by whom it was sworn by the defendant the copy of the writ to set aside which the present motion was made, was drawn up, ought not to operate against the plaintiff, or so favourably to the defendant as to induce the court to discharge him out of custody, and to call upon the plaintiff to pay his costs. But there was another point, namely, as to whether the defendant came to the court in time. He was arrested on the 12th of October, and there was nothing to shew that he had made any attempt to take advantage of the objection he now made until the 2d of November. The rule was that such application must be made within a reasonable time; but twenty-three days was a lapse of time which could not be considered reasonable, when the objection was taken to the writ on a mere inaccuracy. *Primrose v. Baddeley*, 2 Dowl. P. C. 350, was a decision that the rule requiring such applications to be made in reasonable time referred to cases of prisoners, as well as of persons not in custody; and *Cox v. Tullock*, 2 D. P. C. 47, shewed that such an objection must be taken in vacation when there was time to apply to a Judge at chambers. By the 4th section of the Uniformity of Process Act (2 W. 4. c. 39,) the duties of the plaintiff were pointed out, and they terminated on his causing one copy of the writ to be delivered to the sheriff's officer. It was for the latter to serve the persons on whom process was executed with copies of the writ. The defendant surely must not be discharged out of custody, for he was regularly arrested.

Tindal, C. J.—But why is he to remain in a custody which is irregular? By the statute certain things are required to be done, which have not been done.

W. H. Watson.—The arrest was regular nevertheless, for by the statute the copy of the writ was required to be delivered not at

the time of the arrest, so as to make it a necessary part of it, but "upon or forthwith after the execution of the process." The arrest therefore was regular, and the ground of the irregularity of the copy of the writ, although it was good reason for the defendant having a true copy, was not sufficient to entitle him to his discharge.

Tindal, C. J.—The words "upon or forthwith after" the arrest, are used only to avoid the inconvenience which would result from its being necessary to serve the defendant absolutely upon the arrest.

Bosanquet, J.—How is the defendant to know that he is lawfully in custody, if he has not a true copy of the writ? Have not many prisoners been discharged on similar grounds?

W. H. Watson.—In those cases the writs, or the copies left with the sheriff's officer, were irregular.

Cuttman, J.—The arrest is not the point here, but the detention. *Hudd v. Langridge*, 5 D. P. C. 721, is a decision, that in the opinion of the Judge who decided that case, it was necessary before discharging a defendant out of custody, to shew that the copy of the writ left at the office of the sheriff, was irregular. On the point as to the defendant being out of time, *Funnell v. Petre*, 5 D. P. C. 276, is a decision, that after the expiration of nineteen days it is too late for a prisoner to object to a defect in the affidavit to hold to bail.

Wilde, Serj.—In this case an application was made at Chambers two days after the arrest, and the case was adjourned.

W. H. Watson urged that unless this point appeared on the affidavits, it could not be taken from the statement of counsel. The court could only judge from the affidavits. There was no ground here for setting aside any thing but the copy of the writ, and that must be on the sheriff.

Wilde, Serj., in support of the rule, contended that in order to constitute a legal arrest, the provisions of the statute must be complied with in every respect; and the courts had given effect to the statute in requiring conditions to be completed in order to constitute a legal arrest; and when they were not so, the party was not in legal custody. The defendant must be in custody entirely legal, and it was no answer to him to say that it was the fault of the sheriff; but he was entitled to urge his objection. No defendant could be rightfully in custody, unless he had received a correct copy of process, and whether the original writ was wrong, or the copy was wrong, it was immaterial to him, and the objection was equally available; for the fact of his being in custody prevented him from going to the office to ascertain which was really defective. With regard to the time, it was sufficient for the defendant to say that he was now in illegal custody. The objection was not a merely legal one to a want of form, but it was an absolute objection to the legality of the custody in which he was. There was an obvious distinction between objections founded merely on the forms and practice of the court, and to those on the statute. If a correct copy of the writ

had been served in this case, the matter might have assumed another aspect, but it was not so, and therefore the objection as to time could not apply. The statute was for the benefit of defendants; and in *Nicol v. Boger*, 2 D. P. C. 761, a strong opinion was expressed by this court of its being better to adhere literally to the form of a statute; and the importance of giving an exact copy of a writ of *capias* was also pointed out by Mr. Baron Parke, in his judgment in *Smith v. Pennell*, 2 D. P. C. 654. The plaintiff, if he should suffer by the sheriff's negligence, had his remedy against that officer; but it was enough for the defendant to point out the irregularity, and to claim the benefit of the statute.

Tindal, C. J.—I think the application comes too late; and it is a fault on the part of the defendant, that he has not made any excuse on the application to the Judge at chambers. It is a rule often acted upon, that unless some sufficient cause of excuse is shewn, the application will not be entertained after eight days, which is the time for putting in special bail; and that not having been complied with, this rule cannot be made absolute. The question seems to have been, whether this would be an irregularity only, or a void arrest; and I think, under the rule of *M. T. 3 W. 4, s. 10*, it is an irregularity only; and it is clear that on the application of the party himself, he has been allowed, both here and in the other courts, to amend his writ. If that is so, it comes within the rule to which I have referred, and the application is too late. It is unnecessary to go into the other point, as to whether this neglect of the sheriff's officer is sufficient to call for the setting aside of the arrest; but on looking at the question, I think there is little doubt it would be so.

Bosanquet, J.—I am of the same opinion; and I do not think it necessary to repeat the reasons which have already been given by the Lord Chief Justice; but I think the omission to state the name of the King or Queen, falls within the rule of *M. T.* Then it is quite clear it must be taken advantage of within a reasonable time, on an arrest on *mesne process* (which this is), and eight days is the time limited for putting in an appearance; and that time has been adopted over and over again at chambers, as the period within which such an application should be made. On the other point it is unnecessary to give an opinion, although I should be very sorry that it should be supposed that I entertained any doubt upon the subject.

Cuttman, J., concurred.

Rule discharged. — *Bradshaw v. Russell*, a prisoner, *M. T. 1837. C. P.*

Sittings at Nisi Prius.

ATTORNEY.—NEGLECT.

An attorney cannot be considered as guilty of negligence in suffering judgment by default, if upon the whole it appears the most prudent course to pursue.

This was an action to recover compensation

in damages for the injury sustained by the plaintiff in consequence of the negligent conduct by the defendant of a cause in which he had been retained as an attorney.

Goulburn, Serjeant, and *Maguire*, appeared on behalf of the plaintiff. *Kelly* for the defendant.

The evidence was in substance that the plaintiff had been sued in an action for the recovery of a particular debt, and the defendant was employed as his attorney. Pleas not having been pleaded in due time, the plaintiff in that action signed interlocutory judgment for want of a plea, and executed a writ of inquiry. He afterwards sued out execution, and the present plaintiff's property was seized. It was for the alleged negligence of the defendant in suffering judgment to be signed for want of a plea, and the resulting inconvenience, that the present action was brought. It was not shewn by any evidence that express directions had been given by the plaintiff to the defendant to plead; but a letter was put in from the defendant to the attorney of the plaintiff, there stating the surprise of his client, that any such claim should be made, as, if the balance of accounts were struck, a considerable sum would be found due from the plaintiff in this case to the present defendant's client in that case.

Kelly, on the part of the defendant, submitted that the plaintiff must be called. The declaration charged, that the plaintiff had been compelled to pay a certain sum of money, and to pay a considerable amount of costs, in consequence of the defendant's negligence in his mode of conducting the cause. No evidence had been given that the debt was not really due. If it was due, the Court would not allow the plaintiff to recover the debt back, when he ought in justice to have paid the debt. If the plaintiff ought to have paid it, therefore, he could not recover it; so he could not recover any costs which resulted from its non payment. The plaintiff consequently must be nonsuited.

Littledale, J.—The evidence contained in the defendant's letter to the attorney of the plaintiff, acknowledges that there was a balance due to his client, and therefore that might be considered as some evidence to go to the jury.

Kelly then addressed the jury on the part of the defendant.

Littledale, J., left the case to the jury, and directed them to consider whether the defendant had been guilty of negligence in his mode of conducting the case. It was, however, to be remembered, that if it appeared upon the whole, that it was the best thing the defendant could do, to suffer judgment by default, he could not be considered as having acted negligently. It was to be observed, that although two years had elapsed since the claim of a balance by the plaintiff in this action against the plaintiff in the former, no evidence had been given of any proceedings having been taken for the recovery of the balance.

The jury, after a short consideration, returned a verdict in favour of the defendant.

Carter v. Marriott, *Sittings in M. T. 1837.*

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assents.

Commissions of the Peace.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a select committee, which will meet on the 12th Dec.

To extend the time limited by the 1 Vic., c. 30, for abolishing certain Offices in the superior Courts of Common Law, and to make provision for a more effective and uniform establishment of Offices in these Courts, and for establishing and ordaining Tables of Fees proper to be demanded and taken in these Courts. *Ld. Abinger.*

[This bill stands for second reading.]

For regulating Charities. *Ld. Brougham.*

[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to children of tender age. 14th Dec. *Mr. Serjt. Talfourd.*

To amend the Law of Copyright. 14th Dec. *Mr. Serjeant Talfourd.*

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. 28th Nov. *Mr. Mackinnon.*

To facilitate the recovery of possession of Tenements, after due determination of the Tenancy. *Mr. Aglionby.*

[This bill stands for second reading.]

To enable Recorders of certain Boroughs to hold a Court for the recovery of Small Debts. 14th Feb. *Colonel Seale.*

To make better Provision for collecting and distributing the Estates of persons found Bankrupt under Commissions and Fiats directed to *Country Commissioners.*

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb.

Mr. Mahony.

LAW OF PROPERTY.

To improve the tenure of Copyhold and Customary Lands. *Att. Gen.*

To alter and amend the Law relating to the Mortgages of ships and vessels.

Mr. G. F. Young.

To enable Tenants for Life of Estates in Ireland to make improvements in their Estates, and to charge the inheritance with a portion of the monies expended in such improvements. 14th Dec.

Mr. Lynch.

To enable Tenants for Life, and Mortgagors in possession of Lands in Ireland to grant Leases, and to enable Tenants for Life of Lands in Ireland to make exchange, and for giving a summary partition in all cases as to Lands in Ireland. 14th Dec.

Mr. Lynch.

To suspend for three months, from the end of Dec. 1837, the Act passed last Session for amending the law relating to Wills.

Sir E. Sugden.

[The motion for introducing this bill was negatived.]

To enable married women, with the consent of their husbands, to pass their interests in Chattels Personal. 12 Dec.

Mr. Lynch.

To amend the 13 G. 3, for the better cultivation, improvement, and regulation of the Common Arable fields, Wastes and Commons of Pasture in this kingdom. 12 Dec.

Lord Worsley.

To amend the 6 & 7 W. 4, for facilitating the inclosure of open and arable fields in England and Wales. 12 Dec.

Lord Worsley.

To render the owners of small tenements liable to the payment of the rates assessed thereon.

[This bill stands for second reading on February 7th.]

CRIMINAL LAW.

To authorize the summary conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb.

Sir E. Wilmot.

To authorize Recorders of Boroughs, and Chairmen of Quarter Sessions, to reserve points of Law in Criminal Cases, for the opinions of the Judges. 12th Feb.

Sir E. Wilmot.

That certain offences to which the punishment of Death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb.

Sir E. Wilmot.

To amend the Law of Libel. 14 Dec.

Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes Magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that

denote a derangement of mind, and a purpose of committing a crime.

Mr. Barneby.

[This Bill stands for third reading.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales." 8 Feb.

Mr. Harvey. For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb.

Mr. Grote. To amend the Law for the trial of Controverted Elections, or returns of Members to serve in Parliament.

Mr. Buller.

[This Bill has been brought in, and is now in committee.]

To regulate the times of payment of rates and taxes by Parliamentary Electors, and to abolish the Stamp Duty on the admission of Freemen. 1d. J. Russell.

To define and regulate the lawful expenses at elections of Members to serve in Parliament.

Mr. Hume.

MUNICIPAL OFFICERS.

For the relief of persons elected to municipal offices, and entertaining conscientious objections to subscribe the declaration required by the latter part of the 50th section of the Municipal Corporation Act.

[This bill stands for third reading.]

HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mt. Shaw Lefevre.

[This bill is in committee.]

THE EDITOR'S LETTER BOX.

We thank J. O. W. for the trouble he has taken, and will attend in part to his suggestion; but as to the rest, we think the present mode gives the work a more uniform appearance, when bound up in a volume.

The important debate on the Imprisonment for Debt Bill has rendered it necessary to postpone some communications, which will probably appear next week.

The List of the Statutes and Bills in Parliament relating to the Law, which are contained in the last Volume, will be given, as suggested, in an early number.

"An Inquirer" will find all the information he desires in the Second Edition of the *Articled Clerks' Manual*, in the Notes on the Common Law Rules of Examination, p. 207 to 214.

The Legal Observer.

SATURDAY, DECEMBER 16, 1837.

— "Quod magis ad nos
Pertinet, et neacire malum est, agitamus.

HORAT.

THE DUTY OF AN EXECUTOR AS TO THE PAYMENT OF DEBTS.

It is a well known rule in administering an estate, that debts must be paid before legacies; and there is no distinction in this respect in favour of specific legacies.^a And even voluntary bonds and other debts by specialty, must be paid in preference to legacies.^b

The great difficulty which arises in this respect, is with regard to contingent debts. Thus, where there is an outstanding covenant of the testator, or bond with a condition, or the like, which has never yet been broken, but which may be broken hereafter; it is doubtful whether the executor can safely make payment of legacies or deliver over a residue. In the case of *Nector v. Gennet*,^c it was held that the payment of a legacy before a bond which was not forfeited, was good. But in the case of *Huwkins v. Day*,^d Lord Hardwicke decided that an executor was not justified in paying a legacy where there was an unbroken covenant outstanding.

In the *Governor and Company of the Chelsea Waterworks v. Cowper*,^e Lord Kenyon said at *nisi prius*, "that an executor or administrator might satisfy the debts and legacies affecting the testator's or intestate's estate, and pay over the remainder to the residuary legatee, where he had no notice of any other subsisting demand, providing he has not done it precipitately." But this case has not been supported by subsequent decisions.

In *Davis v. Blackwell*,^f Tindal, C. J., said, "I am not prepared to say that payment of legacies would in any case afford an answer in a court of law to an action brought against the executor for a debt due from the testator; for I find the rule universally laid down, that after the payment of debts of the testator or intestate, it is the duty of the executor or administrator to pay the legacies." And in the case of *Norman v. Baldry*,^g nine years had elapsed without any notice to the executors of the existence of the bond; and the debt was not contingent in its nature, but had existed the whole of eleven years, during which time the creditor might have given notice; but yet Sir L. Shadwell, V. C., held that the executor was liable.

But when an annuity is secured by a covenant and warrant of attorney, and all the arrears have been paid, the court will not restrain the executors of the grantor from paying his simple contract debt, until they have set apart a fund to answer the future payments, unless a case of past or probable misapplication of assets is made out.^h

In the latest case on this subject, which we consider of great practical importance, an executor, after payment of all the debts due of which he had notice, invested certain parts of the residue of the testator's personal estate remaining in his hands, in the funds in his own name, received the dividends, and paid them over to the legatees in satisfaction of their legacies given by the will; and it was held under these circumstances that the executor could not sustain a plea of *plene administravit* to an action brought against him, fifteen years

^a *Spode v. Smith*, 3 Russ. 511.

^b 2 Williams on Executors, 830.

^c Cro. Eliz. 466.

^d Amb. 160.

^e 1 Esp. 277.

^f 9 Bing. 8; 2 Moo. & Scott, 7.

^g 6 Sim. 621.

^h *Read v. Blunt*, 5 Sim. 567. The rule is different as to legacies. See *Slanning v. Style*, 3 P. Wins. 339.

after the testator's death for a specialty debt of the testator, of which he had had no notice. The judgment of Lord *Abinger*, C. B., as to this point, was as follows :

This was an action against the executors of Sir Haylett Framlingham, on a bond which had been given by the testator to indemnify the plaintiff against any claim that might be made for the rent of some premises, of which he had taken an assignment. The pleas were, first, *plene administravit* before the commencement of the suit; and secondly, *plene administravit* before any notice of the existence of a bond. Upon the argument this question arose, whether upon the plea set up by the executors they had fully administered. There were certain parts of the residue of the testator's estate which they had invested in their own names in the funds and on a mortgage, changing the security once or twice, for the benefit of the residuary legatees, but which still remained in their charge: and the question was, whether they could be considered as having fully administered the estate, having, without notice of the claim of the plaintiff, paid all the debts and some of the legacies, and apportioned the remainder, as they considered, in satisfaction of the claims of the legatees, on whose behalf they had invested it in the funds. In this state of things, two questions arise: first, whether the executors could give in evidence any payments of legacies under the plea of *plene administravit*; and secondly, whether, in this particular case, the money so invested remaining in their own hands, they could, as to that portion of the assets, sustain such a plea. There is no occasion for us to pronounce any opinion upon the first point, the Court being unanimously of opinion that the executors could not sustain the plea, under the circumstances of this case. They are placed in the situation of having the complete control over the estate of the testator, which remained still in their hands, and which we consider not to be so apportioned by them in satisfaction of any legacies whatever, as to bar the claim of a creditor on a specialty, who was entitled to satisfaction out of the testator's estate. We think, therefore, that the plaintiff is entitled to judgment. Judgment for the plaintiff.¹

¹ *Smith v. Day*, 2 M. & W. 684.

THE REVERSIONARY INTERESTS OF MARRIED WOMEN.

A BILL of considerable interest to the profession was brought in on Tuesday last. It relates to the reversionary interests of married women in personal property, and is intended to give them the power of disposing of them. We shall probably be in possession of the bill next week, and will then enter fully into this subject. In the mean time we refer our readers to the cases of *Hornsby v. Lee*, 2 Mad. 16; *Purden v. Jackson*, 1 Russ. 1; *Honner v. Morton*, 3 Russ. 65.

THE LIABILITY OF INNKEEPERS FOR THE GOODS OF THEIR GUESTS.

THE question of the liability of innkeepers for the goods of their guests having already come before Parliament in the present session, and it being likely again to be brought before them, it may be well to state some of the leading cases relating to it.

Replevin for a horse, for taking and detaining of which the defendant avowed as a common innkeeper; and, upon demurrer, held that the innkeeper may detain, without making any previous demand. Where a traveller comes as a guest, the innkeeper is obliged to accept the horse, and is not to consider whether the guest who brings it is the owner or not. And all the Judges, except *Holt*, held, that if a man place his horse at an inn, though he lodge in another place, that makes him a guest, for the innkeeper gains by the horse, and therefore makes the owner a guest, though he was absent. *Contrà* of goods left there by a man, because the innkeeper has not advantage by them.*

Plaintiff came to an inn with a hamper of hats, and went away, leaving them there two days, and in his absence they were stolen. Adjudged that he should not have an action against the innkeeper, because, at the time of stealing he was not his guest, and the defendant had no benefit by keeping the hamper; therefore he shall not be charged for the loss of it in his absence; but it had been otherwise if the guest had returned the same night; *Moore*, 877.

* *York v. Grindstone*, 1 Salk. 388; 2 Ld. Raym. 866.

And if the host had promised to keep them safely, he might have been answerable upon such special promise.^b

Case against an innkeeper, for goods stolen out of an inn. The plaintiff's servant had requested the defendant to take care of goods until the next market day, which was refused by his wife, the inn being very full of parcels. The servant staid to refresh himself, during which time the goods were stolen from him. A verdict was found for the plaintiff: and in reporting this case upon a motion for a new trial. *Buller, J.*, observed that he was of opinion, that if the defendant's wife had accepted the charge of the goods, upon the special request made to her, he should have considered her as a special bailee, and not answerable in this case, having been guilty of no actual negligence; but that not being the case, he considered this to be the common case of goods brought into an inn by a guest, and stolen from thence, in which case the innkeeper was liable to make good the loss. On shewing cause, it was argued for a new trial, on two grounds; 1st. The innkeeper refused to take charge of these goods, for which the plaintiff might have had his remedy in another form of action, but could not recover in this, which charged the defendant with having undertaken the care of them. But 2dly. The plaintiff did not come into the inn as a guest; he came there for the special purpose of desiring that the landlord would take charge of his goods until the next market day; and all the books agree that where goods are delivered to an innkeeper for a different purpose than to take charge of them as of the goods of a guest, no action will lie for any implied negligence; 1 Roll. Abr. 3, Action *sur* case. E. 1. So, in Dy. 158, b., if a guest come to an inn, and the innkeeper refuse him, because he is already full of guests, and the party says he will shift for himself among the guests, and his goods are there lost, the innkeeper is not chargeable. Now, that applies very strongly to the circumstances of the present case, where the plaintiff was informed by the innkeeper that they were already full of parcels, and could not take charge of his, after which, if he chose to remain there, it was at his own risk.

Per. Cur.—It does not appear to us, that there is any ground for granting a new trial. If it had appeared, as the defendant's counsel suggested, that these goods were lost through the mere negligence of the

plaintiff's servant, the case might have deserved greater consideration; but nothing of that kind appears on the judge's report. According to the report, the case was simply this: the plaintiff's servant came to the inn and desired to have the liberty of leaving the goods, which he could not dispose of in the market, until the next week; that proposal was rejected; then he sat down in the inn as a guest, with the goods behind him, and during that time the goods were taken away. But, although his request was not complied with, he was entitled to protection for his goods during the time he continued in the inn as a guest. It is clear, that the goods need not be in the special keeping of the innkeeper, in order to make him liable; if they be in the inn, that is sufficient to charge him. In *Calye's case*, it is said, although the guest doth not deliver his goods to the innholder to keep, nor acquaints him with them, yet if they be carried away or stolen, the innkeeper shall be charged; and therewith agrees 42 Ed. 3, c. 11, a.^c

Plaintiff was shewn into the traveller's room, as usual, and his boxes were deposited there; but shortly afterwards he spoke to the wife of the defendant, and desired to have another room, pointing to it up some steps, as he said he wanted to shew his goods. This was what they called a private room, and the wife told him that he might have it, that there was a key in the door, and that he might lock the door. His boxes were accordingly removed into the room, and after dining in the traveller's room, he also went into it and drank his wine. In the afternoon, a customer calling, the plaintiff opened the boxes and displayed his goods, which consisted chiefly of jewellery goods, upon a table, and the customer made some purchases. While they were thus engaged, the door of the room was twice opened, and a stranger looked in each time, who begged pardon, and immediately withdrew, and shut the door, upon which the customer suggested the propriety of bolting the door, in order to prevent interruption. About seven o'clock the customer went away, leaving the plaintiff packing up his things, and soon afterwards the plaintiff left the room and went out, and did not return until about nine o'clock, when it was discovered that two of the boxes were missing. The key was in the lock on the outside the door, nor did he know that he ever shut it. The learned Judge stated the

^b *Jelly v. Clark*, Cro. Jac. 188.

^c *Bennett v. Miller*, 5 T. R. 73.

law to the jury to be this, that an innkeeper was *primâ facie* answerable for the goods of his guest in his inn, but that a guest might by his own conduct discharge the innkeeper from his responsibility: the jury found for the defendant.

Per Cur.—There is no doubt that the inn-keeper is liable for goods coming to his custody, unless there is some special circumstance to take him out of that liability. It seems to us that the plaintiff accepting the key of the room, superseded the liability of the landlord to take care of his goods. The plaintiff applied for a room, not as a room of custody, but for the purpose of exhibiting his goods in the character of a dealer in jewellery, and articles of that kind. The landlady might refuse such a room, or she might prescribe the terms upon which she would let him have it; here he accepted the room upon the terms. She says, "this is a particular room; there is the key of that room; you must lock that room." He accepted those terms, and therefore he relieved her from responsibility. But if he had said, "this shall not discharge your liability, look you still to that," the defendant would have replied, "then you shall not have the room." The defendant had a right to refuse the room for the purpose in question, or to concede it upon any terms she chose. We think she did so upon the terms of the plaintiff taking the custody of his goods into his own hands, with the key of the room, and that he accepted the key on those terms. We hold, under such circumstances, that the owner of the inn is not liable; for if we were to hold otherwise, it would be to make the innkeeper liable for the default of the plaintiff. He did not make a communication to the defendant when he left the room, that her responsibility might revive. It appears to us, therefore, that this verdict ought not to be disturbed.^d

The plaintiff came to the defendant's house in Birmingham, and in the course of three or four days afterwards, applied to the defendant for a private room for the purpose of depositing goods there, and exposing them for sale; and the defendant having shewn him a small room, which he approved of, Kirton, the next day, took possession of it, and the key was delivered to him, and was kept by him exclusively for several days; but upon the defendant's wife requesting to place some parcels in the

same room, Kirton permitted her to use the key, and he had not the exclusive use of it. Kirton boarded and lodged in the house for almost a fortnight, and from time to time introduced his customers into the room. A short time before he left the house, he discovered that a package was missing, which made the subject of the present action.

Le Blanc.—A landlord is not bound to furnish a shop to every guest who comes into his house; and if a guest takes exclusive possession of a room, which he uses as a warehouse or shop, he discharges the landlord from his common law liability. The question, therefore, for your consideration, is, whether, when the goods were lost, they were exclusively in Kirton's possession? It is admitted that during part of the time, Kirton kept the key. If afterwards the defendant took the key from him, the goods then ceased to be under his exclusive control, and the defendant became liable for their safe custody. The only question is, whether at the time of the loss the goods were in the exclusive possession of Kirton.—Verdict for the defendant.^e

The latest cases on the subject are the following.

Trover for a coat and pantaloons. Plea, not guilty. The defendant kept a public house at Oxford, frequented by farmers. The plaintiff's clothes, packed up in a box, were deposited in the defendant's kitchen, behind the settle, by a person who said the box was to stay till called for. The box was never seen again by the plaintiff, but when he inquired for it, the defendant said, "I suppose it's behind the settle." Verdict for the plaintiff, with leave for the defendant to move to enter a nonsuit instead, on the ground that there was no evidence of any conversion. *Ludlow, Serj.*, having obtained a rule *nisi* accordingly, *V. Lee* appeared for the plaintiff; but upon reading the learned Judge's report, as above, the rule was made absolute.

In a similar action by a sister of the plaintiff against the same defendant, it was proved that the defendant received parcels for carriers; that the parcels were accustomed to be placed behind the settle; and that when application was made for the parcel in question, the defendant's wife said, "My husband has sent it, no doubt, by Croft, the carrier: he has a bad memory; it's a pity you did not speak to me." Verdict for the defendant. *V. Lee*. in Easter

^d *Burgess v. Clements*, 4 M. & S. 306; S. C. 1 Stark. 251, n.

^e *Farnwerth, assignee of Kirton v. Packwood*, 1 Stark. 249.

term, moved for a new trial, on the ground that the language of the wife shewed that the defendant had interfered by giving directions, which would amount to a conversion. *Sed per Curiam*.—What was there to go to the jury? Was there any thing but negligence? That will not support the action. Rule refused.^a

THE NEW PLAN FOR THE REDUCTION OF POSTAGE.

A PETITION to Parliament is in course of signature by the attorneys, solicitors, and proctors of the cities of London and Westminster, setting forth—

That a cheap, rapid, and punctual communication by means of the post is of the highest importance, not only to the petitioners in their professional avocations, but also to the general trade and business of the country. That the present high rate of postage operates as an encouragement to individuals to forward letters by parcels and private hands, and otherwise to evade the law, and tends, in many instances, to put a stop to correspondence altogether. That documents of great importance, and other papers, are now frequently sent as parcels by coaches and other conveyances, which, if a moderated scale of postage were established, would be transmitted in preference by the post, on account of its greater security, punctuality, and despatch. That the petitioners are convinced that if a lower rate of postage were adopted, the increase of communication through the post would be immediate: that not only would there be no probability of diminution in this branch of the revenue, but that the same would eventually be materially increased.^b

There are but few classes of the community to whom the projected alterations in the Post Office system are so material as the practitioners of the law. We therefore submit to our readers the substance of the statements in favour of the new plan, by which not only a large reduction in the postage will be effected, but the delivery of letters expedited.

As to the cost of the carriage of letters, the following particulars are extracted from Mr. Rowland Hill's pamphlet on the subject, in which an estimate is made of the cost of conveying a letter from London to Edinburgh, a distance of 400 miles, viz.:

^a *Williams v. Gesse*, 3 Bing. 849, N. S.

^b We understand that a petition to this effect lies for signature at the Incorporated Law Society,—not from that Society collectively, but the individual members, and all other attorneys, solicitors, and proctors.

	£.	s.	d.
From London to York, 196 miles, at $1\frac{1}{2}$ d. per mile	1	5	6½
From York to Edinburgh, 204 miles, at $1\frac{1}{2}$ d. per mile	1	5	0
	2	10	6½
Guards' wages: say six guards, one day each, at 10s. 6d. per week	0	10	6
Allow for tolls (which are paid in Scotland), and all other expenses	1	18	11½

Total cost of conveying the mail once from London to Edinburgh, including the mails of all inter- mediate places	5	0	0
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The average weight of the mail conveyed by the London and Edinburgh mail coach is about	8	cwt.
Deduct for the weight of the bags, say	2	"

Average weight of letters, news- papers, &c.	6	"
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The cost of conveyance is there- fore per cwt.	16s.	8d.
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Per ounce and a half, (the average weight of a newspaper,) about one-sixth of a penny.

Per quarter of an ounce, (the average weight of a single letter,) about one thirty-sixth of a penny.

Such being the trifling expense to Government of conveying letters, it is evident that almost the whole charge of postage is really a tax upon those who write letters, and perhaps there may be no objection to the principle of the tax; but then it ought to be an *equal* tax. It is therefore proposed that the postage shall—1st, be equalized; 2d, reduced in amount; and 3d, paid in advance. In favour of the reduction of the amount, without injury to the revenue, it is urged that such reduction in the price of each letter will so increase their number that the result will be the same to the Treasury.

"If it be granted," (says Mr. Hill,) "that the demand for the conveyance of letters has increased during the last twenty years in the same ratio as that for the conveyance of persons and parcels, which can scarcely be doubted, it follows inevitably that, for some cause or other, there is, in effect, a loss in the Post Office revenue of £2,000,000 per annum.

"In support of this view of the case it may be stated, that in France, where the rates of postage are less exorbitant than with us, the gross receipts are said to have increased from nearly 24,000,000 francs (960,000*l.*), in 1821, to 37,000,000 francs (1,480,000*l.*), in 1836, or 54 per cent. in fourteen years."

It scarcely needs proof that the consumption of articles of use will always in-

crease in proportion to their cheapness. Thus it is pointed out by Mr. Hill that—

The price of soap has recently fallen by about one-eighth; the consumption in the same time has increased by one-third. Tea, the price of which, since the opening of the China trade, has fallen by about one-sixth, has increased in consumption by almost a half. The consumption of silk goods, which, subsequently to the year 1823, has fallen in price by about one-fifth, has more than doubled. The consumption of coffee, the price of which, subsequently to 1823, has fallen about one-fourth, has more than tripled. And the consumption of cotton goods, the price of which, during the last twenty years, has fallen by nearly one-half, has in the same time been four-folded.

So long as the tax remains high, it is worth while to evade it, and the *illicit* conveyance of letters is doubtless very extensive. If the postage were moderate, the revenue would gain all that is now lost by this illegal traffic. Mr. Hill states, that—

“With respect to contraband conveyance, it is beyond all doubt that it is at present carried on to a very great extent. An extensive irregular distribution of letters is constantly proceeding in the manufacturing district around Birmingham; and it is well known that vast numbers are every day forwarded by carriers and coach proprietors. Not long ago there was seized in a carrier’s warehouse one bag containing *eleven hundred letters*. Almost all parcels, especially such as are sent at stated times, (booksellers’ parcels for instance,) contain letters; and not unfrequently large packets are sent by coach, consisting of letters alone.”

Then as to the remedy, Mr. Hill proposes stamped covers to be used:

A few years ago, he says, when the expediency of entirely abolishing the newspaper stamp, and allowing newspapers to pass through the Post Office for one penny each, was under consideration, it was suggested by Mr. Charles Knight, that the postage on newspapers might be collected by selling stamped wrappers at one penny each. Availing myself of this excellent suggestion, I propose the following arrangement: Let stamped covers and sheets of paper be supplied to the public from the Stamp Office or Post Office, or both, as may be most convenient, and sold at such a price as to include the postage. Letters so stamped would be treated in all respects as franks, and might, as well as franks, be put into the letter box, as at present, instead of being delivered to the receiver.

In support of this suggestion, it is urged that it would effect a rapid delivery when there is no postage to collect.

At the time of the investigation of the Commissioners of Revenue Inquiry (1828) there

existed in London what was called the “early delivery” of letters; that is to say, any person for a small annual fee was privileged to receive his letters before the usual hour of delivery. The privilege, I believe, still exists, but to a much less extent.

The early delivery was effected thus: the letters in question were separated from the others and distributed by persons, (generally the letter carriers of remote quarters, while on the way to their own proper districts,) who delivered the letters at the respective houses, leaving the postage to be collected by the proper letter carrier of the district, who for that purpose made a second round after completing his ordinary delivery.

In the Lombard Street district, it appears that while half-an-hour was sufficient for the delivery of 507 letters, when the postage was collected afterwards, it required an hour and a half for the delivery of only 67 letters, when the postage was collected at the same time, consequently that one delivery was about twenty-five times as quick as the other.

We ought not, however, to confine our view to the mere question of convenience to letter writers and the receipts of the Treasury. Mr. Hill well observes, that—

The loss of the revenue is far from being the most serious of the injuries inflicted on society by the high rates of postage. When it is considered how much the religious, moral, and intellectual progress of the people would be accelerated by the unobstructed circulation of letters, and of the many cheap and excellent non-political publications of the present day,^b the Post-Office assumes the new and important character of a powerful engine of civilization; capable of performing a distinguished part in the great work of national education, but rendered feeble and inefficient by erroneous financial arrangements.

In addition to the increased correspondence which, from the causes already stated, would arise amongst the present writers of letters, it must be carefully borne in mind that this species of communication would be made accessible to new classes, and those very numerous ones: domestic servants, for instance, who constitute one of the most numerous classes of labourers, are, in general, so far removed from their friends as to have little opportunity of personal communication. And when to this we add the separation occasioned by marriage, apprenticeship, the necessity of seeking employment, going to school, &c., we shall probably come to the conclusion that there are very few families to be found throughout the country, and more especially in the manufacturing districts, without some member, or at least some near relative, being so circumstanced as to create a desire for communication by letter.

We have thus brought the whole subject under the notice of our readers, (thinking

^b Amongst others “The Legal Observer!”

it one of professional interest,) and have put them in possession of all the bearings of the question—leaving them to support the petition to which we have referred, if they think proper to do so.

NOTICES OF NEW BOOKS.

Outlines of Criminal Law: or Readings from Blackstone and other Text-Writers; altered according to the present Law: and including all the recent Statutes.—Comprising PUBLIC WRONGS.—Designed for the use of Young Practitioners, Articled Clerks, and other Law Students. By Robert Maugham, Secretary to the Incorporated Law Society; Author of "*Outlines of Law, comprising PRIVATE WRONGS, and their Remedies in the Courts of Law, Equity, and Bankruptcy.*" London: Richards & Co. 1837.

THIS volume appears to be usefully designed for the assistance of Students preparing for Examination, and to afford other persons an opportunity of reading a summary of the Criminal Law as now altered. The mode in which the author has proceeded in execution of his task is described in the preface, from which the following is extracted:

"This volume, comprising a summary of the Criminal Law of England, or *Public Wrongs*, is founded mainly on the text of Blackstone. Instead, however, of retaining in the body of the work, the repealed parts of the law, and pointing out the alterations by way of note, (after the manner of previous commentators,) the present editor has omitted whatever is no longer the law, except where a concise recital appeared useful; and the new enactments and decisions have been introduced in the appropriate parts of the text. This was the plan adopted in his previous volume, relating to *Private Wrongs*, or the Injuries to Persons and Property, and their Remedies in the Courts of Law, Equity, and Bankruptcy. Each volume forms a distinct work,—the one of the *Civil*, the other of the *Criminal Law*; and it is hoped that they will enable the young lawyer, at the commencement of his studies, to lay the ground-work of his professional knowledge both easily and extensively.

"The annotations of previous editors have been consulted; but their learned labors, however eminently useful to the student in an advanced stage of his progress, are not precisely adapted to his outset; they are scarcely consistent with the elementary nature of the text, and their details and complexity unfit the mind for a comprehensive view of that general Out-

line of the Law which was evidently designed by the learned commentator.

"Besides introducing under each division of the subject the principal changes which have occurred since Blackstone's last edition, it has been deemed advisable, in one of the chapters on the Offences against Property, to substitute for the text of Blackstone an abridgement of the masterly digest of the Law of Theft, contained in the First Report of the Criminal Law Commissioners. The ameliorations in the Criminal Code of late years, also rendered it inappropriate to retain the reflections of the learned Judge upon its severity. The offences now punishable by death are only one-tenth of the number which existed in the time of Blackstone.

"The jurisdiction and mode of proceeding in the Courts have been reserved, as in the former volume, for separate and subsequent consideration: it being obvious that the subjects of these volumes will more deeply interest the reader than the forms of Pleading and the rules of Practice."

The subjects comprised in the present volume are as follow:

1. The Nature of Crimes.
2. Persons capable of committing Crimes.
3. Principals and Accessories.
4. Offences against God and Religion.
5. Offences against the Law of Nations.
6. High Treason.
7. Felonies injurious to the King's Prerogative.
8. Præmunire.
9. Misprisions and Contempts affecting the King and Government.
10. Offences against Public Justice.
11. Offences against the Public Peace.
12. Offences against Public Trade.
13. Offences against the Public Health, and Public Police or Economy.
14. Homicide.
15. Offences against the Persons of Individuals.
16. Offences against the Habitations of individuals:—Burglary.
17. Burning or destroying Houses, Buildings, or Ships.
18. Offences against the Property of Individuals:—Theft, or Stealing from the Person, and Robbery.
19. Offences against Private Property (continued):—Malicious Injuries.
20. Offences against Private Property (continued):—Forgery.
21. The Means of Preventing Offences.

An Appendix is added, containing the Acts of 1 Vict. c. 90, (relating to Punishment by Transportation,) and 1 Vict. c. 91, (abolishing the Punishment of Death in certain Cases), and a List of the Offences still punishable by Death. The other Acts of the last Session of Parliament are embodied in the several Chapters to which they belong.

NEW BILLS IN PARLIAMENT.

RATING TENEMENTS.

This is "A Bill to render the Owners of small Tenements liable to the Payment of the Rates assessed thereon." It recites that the collection of the rates assessed on the occupiers of small tenements, and of tenements let for short terms, is difficult, and the payment of such rates is greatly evaded: And it is therefore proposed to be enacted.

1. That it shall be lawful for the churchwardens and overseers of every parish in England and Wales, and all other officers whose duty it may be to make and levy any rate thereon, to demand and collect the sums which shall be assessed in any such rate for or in respect of tenements which shall be let to the occupiers thereof at any rent or rate not exceeding six pounds yearly, either from year to year or any less term, or on any agreement by which the rent (not exceeding the amount aforesaid) shall be reserved and made payable at any shorter period than three months, of and from the actual occupiers of such tenements; and in case of refusal or neglect on the part of such occupiers to pay any such rates, it shall be lawful for the said officers either to enforce the payment of such rates by such occupiers, and to levy the amount thereof, with the costs incurred by the non-payment thereof, on their goods and chattels, in like manner as the same may now be enforced and levied, or to demand of and collect from the owners of such tenements the payment of such rates, and upon non-payment thereof to enforce the sum against such owners, and levy the amount thereof, with costs as aforesaid, on their goods and chattels, in like manner as the same might have been enforced and levied, if such owners had been the actual occupiers of such tenements.

2. That it shall be lawful for the guardians of the poor of every union of parishes which is or shall be declared, and of every single parish for which a board of guardians is or shall be established under the powers of the act passed in the fourth and fifth years of the reign of his late Majesty, intituled, "an Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," to resolve and direct that the sums which shall be assessed in all rates in any parish comprised in such union, or in such single parish, for or in respect of all tenements which shall be let to the occupiers thereof at any rent or rate exceeding six pounds, but not exceeding twenty pounds yearly, either from year to year or any less term, or on any agreement by which the rent, not exceeding the amount aforesaid, shall be reserved or made payable at any shorter period than three months, shall be borne by the owners of such last-mentioned tenements instead of the actual occupiers thereof; and that it shall be lawful for the said guardians of the poor from time to time to rescind, renew, vary and amend every such resolution or direction; and that the

officer of every such parish, whose duty it may be to make and levy the rates therein, shall and they are hereby empowered and required to carry into effect all such resolutions and directions of the said guardians of the poor, and in pursuance and execution thereof to collect and levy the sums which shall be assessed in such rates, for or in respect of such last-mentioned tenements, in such and the like manner, and as fully to all intents and purposes, as is herein provided with respect to tenements let at rents not exceeding six pounds by the year.

3. That every occupier who shall pay any such rate as aforesaid, or upon whose goods and chattels the same, and the costs incurred by the non-payment thereof or any part thereof, shall be levied, shall and may deduct the amount of the sum which shall be so paid or levied out of the rent which is or shall become payable by him to the owner in respect of such tenements, and shall be and is hereby acquitted and discharged of and from an equivalent portion of such rent as fully and effectually as if the same had been paid to and received by such owner for or towards the rent of such occupier.

4. That the owners of such tenements who shall pay the sums assessed in the rates for the relief of the poor in respect thereof as aforesaid, shall be entitled to have and enjoy, instead of the actual occupiers thereof, such right to take copies of or extracts from such poor rates, and such remedy by objecting to or appealing against such poor rates, and such privileges of being present at any vestry or parochial meetings of the parishes in which such tenements are situate, as such occupiers would have had and enjoyed, if they had paid such poor rates on their own account; and that on all questions relating to the execution of the laws for the relief of the poor, such owners shall be entitled to have, in respect of the aggregate amount of the rateable value of such tenements belonging to them respectively, the number or proportion of votes which is in and by the said act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, for the amendment and better administration of the laws for the relief of the poor, given to rate-payers in respect of their occupation on the election of guardians as therein mentioned.

5. That nothing in this act contained shall prevent the occupier of any tenement, who, in right of his occupation or of paying to the poor rate, would be entitled to the elective franchise for members of parliament, or for the purposes of any municipal corporation, from claiming to be subjected to the payment of the poor rate in manner provided by 2 W. 4, c. 43, or 5 & 6 W. 4, c. 76, or any act to amend or extend the said last-mentioned acts, or either of them: Provided that in case any such occupier claiming as aforesaid shall make default in the payment of such poor rate, such owner shall become and remain liable for the payment thereof.

6. That so much of 54 G. 3, c. 110 & 111, and 5 & 6 W. 4, c. 50, s. 32, as empowers justices of the peace to order and direct that per-

sons shall be excused from the payment of poor rates or highway rates, shall be repealed.

7. That nothing in this act contained shall affect the powers given by any general or local act of parliament to make compositions for any rate with the landlords of certain tenements, or any powers auxiliary thereto.

8. That in the construction of this act, unless there be something in the subject or context repugnant to such construction, the word "tenement" shall be construed to include any land, house, dwelling, apartment, or other hereditament, together with the garden, yard, curtilages, and other appurtenances or easements held and let therewith; the word "owner" shall mean and include any person being the immediate lessor of the actual occupier of a tenement, and claiming or receiving the rents of such tenement either for his own use or as mortgagee or other encumbrancer in possession, and any person receiving such rent for the use of any corporation aggregate, or of any landlord or lessor who shall not be usually resident within *twenty* miles of the parish in which such tenement shall be situate; the word "occupier" shall mean any tenant at rack rent, and any person beneficially occupying any tenement, not being a lodger or under tenant of a tenant at rack-rent; the word "rate" shall extend to and include any rate or rates in aid, mulct, cess, assessment, collection, levy, subscription or contribution raised, assessed, imposed, levied, collected or disbursed for the relief of the poor, the amendment and reparation of the highways, and the reparation and support of the church; and the words "rack-rent," "person," "rules, orders and regulations," "vestry" and "parish," and all words importing the singular number or masculine gender only, shall be construed to have the same signification as the same words are declared to have in the said act of the fourth and fifth years of the reign of his late Majesty for the amendment and better administration of the laws relating to the poor.

9. Act only to extend to England and Wales.

SUMMONING JURIES.

This is a bill to remove doubts as to Summoning Juries at *Adjourned Quarter Sessions of the Peace*. It recites that doubts have existed as to the legality of summoning juries for the trial of prisoners at adjourned quarter sessions, and to remove such doubts it is proposed to be enacted,

That it is and shall be lawful for the justices of the peace for any county, riding, division, or place in England and Wales, in quarter sessions assembled, when to them it shall seem meet, to direct the summoning of juries in the accustomed manner to attend such adjourned court of quarter sessions for the despatch of business of such adjourned quarter sessions, in the same manner as they may be now summoned to attend any general quarter sessions; and the juries so summoned to attend any adjourned quarter sessions shall have the same duties and powers as if they had been summoned to attend any general quarter sessions.

But this is not to affect the 6 G. 4, c. 50, relating to jurors and juries.

RATES OF PARLIAMENTARY ELECTORS.

This bill proposes to enact that no person, whose name is or shall be on the register for the time being as entitled to vote in the election of a member in parliament, shall be required, in order to entitle him to have his name inserted in any list of such voters to have paid any poor rates or assessed taxes, except such as shall have become payable from him previously to the 11th October in the preceding year.

The bill also proposes to abolish the stamp duty on the admission of freemen.

SELECTIONS FROM CORRESPONDENCE.

COMMON LAW FEES.

To the Editor of the Legal Observer.

Sir,

I READ in one of the Numbers of your useful publication a list of fees in the Common Law Courts proposed to be abolished, and was much surprised at it after what has been said on the subject for some time past.

The fees proposed to be abolished (with one or two exceptions) are all of the *smallest* amount, and must be perfectly unimportant either to the attorney or his client, whether abolished or not. But why not, Mr. Editor, abolish court fees—entries of pleadings—passing records—searching for judgments, &c. and fees for which no duty (beyond entering the name of the cause) is performed.

When this is done, I (with many others in the profession) shall believe something is really intended; at present it is but a mockery.

AN OLD PRACTITIONER.

[We understand that no fees will be charged for entering pleadings or passing records, except a fee of 7s., applicable to all cases, without reference to the extent of the pleadings. We believe also that an alteration will be made in the charge on searching for judgments, &c. Ed.]

SUPERIOR COURTS.

Lord Chancellor's Court.

PORTION BY SETTLEMENT.—SATISFACTION OF A LEGACY.—EVIDENCE.

Sir J. B., being seized of a reversion in fee, (expectant on events which happened) devised the same to trustees for a term, to raise therefrom and from his personal estate the sum of 50,000l., and to hold 10,000l. of that sum for each of his five nieces, for her life, and, after her death, for any husband who might survive her, for his life, and after the death of the survivor, for all the children of each niece respectively. Upon the marriage of one niece afterwards, Sir J. B. by the settlement charged his said reversion with pay-

ment of the interest of 10,000*l.* to her husband for life, and after his death, to that niece for life, and after the death of the survivor, with payment of 10,000*l.* to trustees for the younger children of the marriage. Sir J. B. afterwards made a codicil to his will, and confirmed it. Held by the Lord Chancellor, reversing the Vice-Chancellor's decree, that the provision by the marriage settlement was a satisfaction of the provision by the will; and that the codicil did not revive the legacy.

Sir John Barrington was tenant for life, with the ultimate remainder to himself in fee, of an estate in the Isle of Wight. He was not married. He had one brother, Fitzwilliam Barrington, who had six daughters and no son. Upon the marriage of the eldest of these ladies with Sir Richard Simeon in 1813, Sir J. B., by deed, charged his reversionary estate with payment of 10,000*l.* to trustees for that niece and her husband and their children; and in 1817, he, by his will, devised his said reversion, subject to certain charges, to trustees for 1,000 years, to raise out of the same by sale or mortgage, and out of certain personal property which he gave the same trustees, the sum of 50,000*l.*, which he directed to be held upon trust for the benefit of his five unmarried nieces, one-fifth thereof to each for her life, and after her decease, in trust to pay the dividends to any husband she might leave surviving her, for his life, the capital of each 10,000*l.* to be divided equally among all the children of each niece after the death of her and her husband, &c. Subject to the term and other charges, he devised his said reversion to his eldest niece, Lady Simeon, remainder to her first and other sons, &c. Previous to the marriage of his third niece to Mr. Powys, soon after the date of the will, Sir J. B., for the love he bore her, and for her advancement in life, and to provide maintenance for her, charged his said reversion in fee with payment of the interest of 10,000*l.* to the intended husband for life, and after his decease to the intended wife, Sir J. B.'s said niece, for her life, and after the decease of the survivor of them, with payment of 10,000*l.* to trustees for the younger children of the marriage. The marriage of the third niece with Mr. Powys was duly solemnized in 1817. Sir J. B. in 1818, made a codicil to his will, confirming the same, and died the same year. Mrs. Powys died in 1821, leaving her husband and issue, one son, surviving. The husband filed his bill in 1833 against the trustees of the will and of his marriage settlement, Sir Richard and Lady Simeon and others, claiming the interest of the two sums of 10,000*l.* and 10,000*l.*, to be paid to him for his life, according to the trusts of the will and settlement.

The Vice-Chancellor made a decree according to the prayer of the bill. The case before his Honor was reported, first in 12 Leg. Obs. 137, and subsequently in 6 Sim. 528, where the will and settlements are fully stated. Sir Richard and Lady Simeon appealed from his

Honor's decree. The appeal was argued in Dec. 1836, by Sir C. Weitherell, Mr. Wigram, Mr. Wray, and Mr. Bethell, for the appellants; and by Mr. Knight, Mr. Jacob, Mr. Walker, and Mr. Chandless, for the respondent and other parties. A vast number of cases referred to in Mr. Simeon's report were again cited in the argument on the appeal.

The Lord Chancellor now gave his judgment.—The will and settlement in the case having been set forth in the sixth volume of Mr. Simon's reports, it was not necessary to state them. The question was, whether Sir John Barrington intended to give to his niece a double portion of 10,000*l.*: one by his will, the other by the settlement on her marriage. The case was of great importance, not only on account of the amount of the sum in dispute, but also of the principle involved in the question, and of the difficulty of deducing it from the decided cases and applying it to this. As he could not concur with the Vice-Chancellor's decision, he carefully examined all the cases and authorities. It was clear that if Julia Barrington (Mrs. Powys) had been the daughter, instead of being the niece, of Sir John B., the provision made for her by the settlement would be an ademption of that made by the will. The Vice-Chancellor did not doubt that proposition; but his Honor rested his judgement on this ground, that Sir J. B. could not be considered to be in *loco parentis* to the niece. It therefore becomes necessary to consider what acts of a person will put him in the relation and give him the character of being in *loco parentis* to any one. Lord Eldon in *Ex parte Pye*^a and other cases, laid down those observations, which would carry out the meaning and definition of the terms. Sir William Grant in the case of *Wetherby v. Dixon*^b defines the relation of a person in *loco parentis* to be "a person assuming the parental character, or discharging parental duties." The Vice-Chancellor in his judgment gave this definition—"that he must be a person that has so acted towards the children as that he has thereby imposed upon himself a moral obligation to provide for them."^c This definition implies that the person who is to stand in *loco parentis* takes in fact the place of the parent; and Lord Eldon's observations would come up to that view of the character. The rule, as applied, is of presumed intention; a father is presumed to do what he assumed by his acts; so also is he who takes on himself the office of a parent. The Court would require proof of the assumption of the character in one who was not the parent. If the Vice-Chancellor's definition were to be adopted, the proof required would be whether Sir John Barrington had not taken on himself the duty of a parent—whether he had not by his acts put himself in *loco parentis* to his nieces. If it appeared from on examination of the evidence that Sir John Barrington gave his brother, who had

^a 18 Ves. 140. See 151.

^b 19 Ves. 407. See 412.

^c 6 Sim. 556.

only a trifling income, the means of supporting his family, and that his assistance was systematic, it would follow that he took upon himself the duty of providing for the brother and his family, and his Lordship would therefore come to the conclusion that Sir John did so place himself in *loco parentis* with the brother's children, so far as related to a future provision for them. There was evidence given and objected on that point, but he thought it was admissible in order to see whether it supports the proposition that Sir John Barrington put himself in the situation of a parent to his nieces. It was in evidence that for a great number of years he bound himself to pay 400*l.* to his brother, and his bankers and solicitors proved payment of large sums, beyond that, to the brother's family; that he was always ready to supply them with money, as much as if he were their father. On the marriage of the eldest niece with Sir R. Simeon in 1813, and of the third with Mr. Powys in 1817, Sir John made arrangements of his reversion of the estate in the Isle of Wight, which, as well as the letter to his brother,^d were of the greatest importance to shew that he took upon himself the duty of parent towards his nieces. He was a party to the negotiations on both marriages, and principal party to the deeds of settlement, the brother (their father) being not a party thereto. His Lordship read the settlement made in contemplation of Mrs. Powys's marriage, and asked if Sir J. B. did not thereby discharge the duty of a parent, and if the provision made for her was not a portion? If so, that evidence proved the two points in the case; first, that Sir J. B. put himself in *loco parentis*, and secondly, that he had no intention to give his niece a double portion. He gave by the settlements of 1813 and 1817, portions of 10,000*l.* to each niece: what grounds were there for supposing that he altered his intention in making his will?—None. The declarations of parties were admissible to shew intention; and the evidence here shewed Sir J. B.'s intention to be to make equal provision of 10,000*l.* to each of his nieces. It was argued that the trusts of the will and of the settlement being different, prevented the ademption of the former by the latter. But after the late decision of the House of Lords, in *Earl Durham v. Wharton*,^e such slight differences can no longer be relied on. Although he had not taken any part in that decision—having been counsel in the cause in the Court below—he fully concurred in it. It was also argued that the codicil confirming the will, after the date of the settlement, made the will speak from its date, and restored the legacy of 10,000*l.*, if it had been adeemed by the intermediate settlement. But there were several cases opposed to that view: *Drinkwater v. Falconer*,^f *Monck v. Monck*,^g and *Booker v. Allen*.^h

The observations of Lord Eldon in *Trimmer v. Bayne*, and of Lord Mannors in *Monck v. Monck*, were strictly applicable to the circumstances of this case to shew that Sir J. B. placed himself in *loco parentis* to his nieces. In the latter also, parol evidence was admitted to shew the intention and acts which would give a person this character. On these authorities his Lordship held the evidence in this case admissible. The result was, that Sir J. B. intended his niece to have but one provision; so much, therefore, of the decree as gave the plaintiff the interest of the additional 10,000*l.* is to be reversed, without costs; and so much of the bill as prayed for that is to be dismissed.

Powys v. Mansfield and others, at Lincoln's Inn, 14, 16, 17, 19 & 20, Dec. 1836, and at Westminster, Nov. 17, 1837. L. C.

Queen's Bench.

[Before the Four Judges.]

ATTORNEY'S READMISSION.

An attorney, after practising for some years, discontinued his practice, and ceased to take out a certificate. He was subsequently readmitted, but did not then resume his practice, and did not take out his certificate. At the expiration of three years from his readmission, without applying for a second readmission, he took out a certificate, and began practising: Held, that by not taking out a certificate for more than a year after his readmission, he had ceased to be upon the rolls of the Court; that he was not entitled to practise without being a second time readmitted; and that his practice, without such second readmission, was illegal: and the Court ordered certain judgments on securities, received by him in payment for business then done, to be set aside.

This was a rule to shew cause why certain judgments on various securities, held by the plaintiff to secure payment to him for business done by him for the defendant, should not be set aside, on the grounds that such business had been done when the plaintiff was off the roll of attorneys of this court; that his practising therefore at that time was illegal; and that the court would not enforce in his favour securities thus obtained. It appeared by the affidavits that many years ago Mr. Wilton had been admitted as an attorney, but in the year 1820, he omitted to take out his certificate, and ceased to practise. In Trinity term, 1823, he desired to resume his practice, and was, upon his application, readmitted as an attorney, but did not take out any certificate. Between that time and January 1826, he did not in fact carry on any business as an attorney and solicitor; and, before he did undertake any such business, he in Jan. 1826, duly took out his certificate. In that year he performed for the defendant the work and labour as an attorney and solicitor, in respect of which he held the securities, the judgments upon which it was the object of this motion to set aside.

^d See letter, 6 Sim. p. 539.

^e 3 Clark and Fennelly, 146.

^f 2 Ves. sen. 623: see 626.

^g 1 Ball and B. 296.

^h 2 Russ. and Myl. 270.

Mr. Erle, Mr. Cresswell, Mr. W. H. Watson, and Mr. Addison, shewed cause against the rule. The plaintiff here was in 1826 upon the rolls of the court, and was therefore entitled to practise as soon as he had taken out a certificate. The case of *Ex parte Matson*^a shews that the neglect to take out a certificate, against which the statute intended to provide, is that of which a party is guilty when he practises his profession, but is at the time practising without a certificate, not when he ceases to do so. There Lord Ellenborough said, that the word "neglect" in the statute meant culpable neglect, and the Court held that that word with that meaning did not apply to a person who had omitted to take out his certificate during the interval of his ceasing to practise. Here the plaintiff did cease to practise while he was without his certificate, and on his again taking out a certificate he was entitled to practise. His re-admission had given him that right. That re-admission placed him on the footing of a person who had been admitted, and had not taken out his certificate, nor practised for a year afterwards. Such person may take out his certificate without applying for re-admission. *Ex parte Jones*.^b That case is the most recent on this subject, and it is one of great authority; for Mr. Justice J. Parke, who decided it, inquired of the master as to the practice, and had the statute fully brought to his notice. As the plaintiff had the right to practise, the securities he took in payment for business done are available, and the Court will not set aside the judgments obtained upon them, but will allow him to put them in suit against the defendant.

The Attorney General and Sir W. Follett, in support of the rule.—Where an attorney has for twelve months discontinued to practise, he is considered completely off the rolls, and therefore, in *Ex parte Bartlett*,^c the Court would not dispense with the necessity of a term's notice, though the party applying had ceased to practise on account of illness and of pecuniary embarrassments. In *Ex parte Matson*,^d the Court did not mean to say that re-admission was not necessary, but merely decided that, under such circumstances as existed in that case, the arrears of duty need not be imposed; and the party there was in fact re-admitted. The same rule was adopted in *Ex parte Clarke*^e and *Ex parte Calland*;^f but in both cases the parties applied for re-admission. In *Prior v. Moore*,^g the old rule is mentioned, that "the privileges of attorneys are confined to those who have practised within a year; for it is a rule that such as have not been attending their employment in the King's Bench for the space of a year, unless hindered by sickness, be not allowed their privileges." And though that rule was not acted on in that case, it was

because the question there did not relate to the privileges of an attorney in carrying on suits for other persons, but merely to his claim to be sued by a bill of privilege, as an attorney of the Court. If the argument on the other side is good, it goes to this extent, that the re-admission was unnecessary in 1823, and would be unnecessary at any time whatever, no matter how long the party had been out of practice. The securities here have been obtained in respect of illegal practice, and the Court will not allow the party to enforce them.

Cur. adv. vult.

Lord Denman, C. J., on the last day of term delivered judgment in this case. This was a motion to set aside a judgment on certain securities given by the defendant to the plaintiff for business done as an attorney by the latter for the former. The ground of the motion was, that at the time the business was done, the plaintiff was not lawfully entitled to practise as an attorney. This question depends upon the 31st sec. of the 37 Geo. 3, c. 90. It appears that Mr. Wilton had been admitted many years ago to be an attorney of this Court, and that for some years he regularly took out his certificate. He then ceased to do so for three years. At the end of that time he obtained a rule for his re-admission to the rolls of the Court. Again he ceased to practise, and he took out no certificate. The question under these circumstances is, whether he could again practise upon merely taking out his certificate, and without in the first instance being re-admitted. It has been said on the one hand that the statute only required the party to take out his certificate when he actually practised, and though the omission to take it out prevented him from practising during the year in which he had no certificate, it would not prevent him from practising, if, in the following year, he again took out his certificate. In other words, that having been once re-admitted, he might practise whenever he chose to take out a certificate. The argument in support of this proposition was ingenious, and if the statute had been perfectly new, we might have felt inclined to give some weight to it, though I cannot say that we should have adopted it; but the statute is not a new statute, and decisions have previously taken place upon its construction, from which we are not now at liberty to depart. There is no express decision in the books, that where an attorney merely ceases to take out a certificate for one year, he must be re-admitted before he can be allowed to resume his practice, yet such has been the usual course; and the necessity on which the application for re-admission has been required exists in such a case, and the inquiry usually made by the Court into his conduct during the time he has been out of practice, is just as proper as under any other circumstances; and the Court will in that, as in any other case, take upon itself to regulate the terms of his re-admission. This inquiry, is in fact, intended for the benefit of the public, by enabling the Court to ascertain what has been the conduct of its officer during his absence from the

^a 2 Dowl. & Ryl. 238.

^b 2 Dowl. Prac. Cas. 451.

^c 1 Chitt. 207.

^d 2 Dowl. and Ryl. 238.

^e 2 Barn. and Ald. 314.

^f Id. 315, n.

^g 2 Maule & Sel.

active exercise of his profession. The statute has been said in many cases to be one of fiscal regulation; and undoubtedly it is so to some extent; and to that reason is owing the circumstance that the Court have not given to it a retrospective effect, and subjected attorneys to penalties imposed by other acts which have been passed *alio intuitu*. The 37 G. 3, c. 90, s. 31, is the act on which we must decide this case, and we shall decide it on the 31st section alone, and without considering the 30th, though that too is connected with the same matter. The general rule on which we shall proceed being thus established, the next question is, whether any distinction can be said to exist in this case from the circumstance of the plaintiff having been re-admitted in 1823, and not having practised on that re-admission till 1826. It was held in *Ex parte Jones*,^a which was referred to in the argument, that where an attorney has been admitted, but has never taken out his certificate, he is entitled to take it out without re-admission; and if that case must govern the present, it certainly is difficult to see the distinction between his right, founded upon an original admission, and his right founded upon a re-admission. But in that case the attention of the learned Judge does not appear to have been drawn to the case of *Ex parte Nicholas*,^b where, on an application to the Court of Common Pleas, it was held that the admission of an attorney who has omitted to take out his certificate for one whole year after his admission, is absolutely void, and he must be re-admitted before he can practise. The former case, therefore, is not so strong an authority as it might have been; but assuming it to be right, it is not like this case. The object of the application for re-admission is, that the Court may deal with the circumstances of the case in deciding both upon the re-admission and on the terms on which it is to be granted; and the Court certainly would not grant the re-admission, if it knew that the man did not mean to practise for years; for then, if being once re-admitted, he was not again liable to apply for a second re-admission, the Court would not have any control over his conduct in the mean time. At the time of admission in the first instance, the Court cannot impose terms: it can only admit or refuse admission to a clerk who applies to be placed upon the rolls of attorneys; but at any subsequent period the Court has a right to inquire into the conduct of the party, and may impose what terms it pleases upon his re-admission. Upon the first question in this case, therefore, we think that Mr. Wilton was off the roll of attorneys at the time that the business was performed in respect of which he holds these judgments and other securities. It remains then only to be considered whether these securities are vitiated by that circumstance. On this point we think that we are bound to hold, in order to give effect to the provisions of this statute, that he cannot avail

himself of the judgment on the securities thus obtained. In this particular case it is sworn that his disability was unknown to his client at the time; but we cannot give any effect to that circumstance, for what was obtained in consequence of illegal practice is itself illegal, and cannot be enforced.

Rule absolute.—*Wilton v. Chambers*, M. T. 1837. Q. B. F. J.

Common Pleas.

DRAMATIC LITERARY PROPERTY ACT.

The question as to whether there has been a representation of a part of any dramatic entertainment, within the stat. 2 & 3 W. 4, c. 15, is for the jury, and the jury having found that the singing the words of a song in an opera amounted to such a representation, the Court will not disturb the verdict.

Wilde, Serjt., moved to set aside the verdict found in this case for the plaintiff. The question turned upon the construction to be put upon the statute 2 & 3 W. 4, c. 15, which was "An act to amend the Laws relating to Dramatic Literary Property," and the point was, whether there had been such a representation by the defendant of a dramatic production claimed by the plaintiff as amounted to an infringement of the statute. It appeared that some years since, an opera called "Oberon," had been produced at Covent Garden theatre, which was founded on a very old tale, the words being written by the plaintiff. The music of the opera having become very celebrated, the defendant recently determined to re-produce it at the St. James's theatre, of which he was the proprietor; and in order to effect this, he employed a person to write an entertainment as a vehicle for conveying the music before the public, and the piece was produced as "The Enchanted Horn." At the rehearsal the words composed for the defendant were given out to the various performers, but on the representation of the performance it appeared that the singers, amongst whom was the defendant, were imperfect in the new words, and they sung portions of the words which had originally been composed by the plaintiff for the opera of Oberon, with which they were acquainted. The statute, section 1, enacted, that "the author of any tragedy, comedy, opera, &c., or any other dramatic piece or entertainment, composed and not printed and published, should have as his own property the sole right of representing it, or causing it to be represented, at any place of dramatic entertainment. The second section provided, that if any person should, during the continuance of such a right, contrary to the intent of the act, represent or cause to be represented, without the consent in writing of the author first had and obtained, any such production as aforesaid, or any part thereof, every such offender should be liable, for each and every such representation, to a penalty not less than 40s., or to the full amount of the

^a 2 Dowl. Prac. Cas. 451.

^b 6 Taunt. 408.

benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, which ever should be the greater damages, to the author or proprietor of such production, to be recovered, together with double costs of suit, in any Court having jurisdiction in such cases in that part of the British dominions in which the offence was committed. The question, therefore, arose upon the construction to be put upon the statute, as to whether the representation which had taken place was such as was a substantive "part of a dramatic" piece. It was submitted, however, that the mere performance of a few lines of one or two songs was not within the act, but that some positively substantial portion of the entertainment was intended, and it must be such a portion as would tend to take away or injure the property of the author. At all events, there had not been wilful infringement of the plaintiff's right, for the defendant had taken means to produce new words to the music, and the old words having been accidentally sung, would not entitle the plaintiff to recover. At the trial before *Tindal, C. J.*, it was left to the jury to say whether the facts proved constituted a representation, and they found a verdict for the plaintiff, damages 40s. It was submitted that the Lord Chief Justice should have expressed some opinion to the jury, for that the construction of the act was a point on which he ought to have directed them, and that on this ground, therefore, a new trial ought to be granted.

Tindal, C. J.—It appears to me that the question must be determined by the jury who tried the cause. The act provides that no person shall represent the whole or any part of a dramatic entertainment. It would be impossible to lay down any distinct and definite rule as to what is a part; and we cannot say that a little more or a little less may or may not be represented, and it is for the jury therefore to determine the question. The statute does not assess the amount of damages, but it only points out what may be given; and the fact of so small an amount being given makes us the less inclined to disturb the verdict.

Vaughan, J.—I cannot adopt the idea that the expression in the statute "any part" must be taken to be a substantial part; and it was for the jury to say, whether it was a piracy of a part or of the whole. The question will often arise, and it will be a nice question for them to decide, but it is for their consideration.

Bosanquet, J.—I am of the same opinion, and a "part" being referred to in the statute, and the defendant having sung two or three songs, I think that is an infringement of the statute.

Coltman, J.—I am of the same opinion, and think the question was rightly left to the jury; for it is matter of fact, and not of law.

Rule refused.—*Planché v. Braham*. M. T. 1837. C. P.

DISTRINGAS.—SERVICE OF WRIT.

The Court will grant a rule for a distringas, when, after four calls and three appointments, the writ is left with the defendant's wife, and her daughter afterwards follows the person trying to serve it, and endeavours to force him to take back the writ, and it in consequence falls into the street.

Cottingham moved for a rule for a *distringas*, under the Uniformity of Process Act. The affidavit on which the motion was made stated that there had been four attempts made to serve the defendant, but that his wife had been seen on each occasion, and that appointments had been made to which the defendant had not attended. That on the last occasion, on the deponent going to the defendant's house, he served the defendant's wife with the writ, and explained to her what it was; but she declared it was no use to serve her, and after the deponent had gone away, the daughter of the defendant came to him, and inquired whether he had not left a writ for Mr. *Cloak*? He answered that he had, on which she desired him to return and take it back. He refused, and she then endeavoured to give him back the writ, but he would not take it, and it fell into the street.

Tindal, C. J.—You may take a rule.

Rule granted.—*Sharpe v. Cloak*, M. T. 1837. C. P.

Exchequer of Pleas.

NOTICE OF DECLARATION.—TIME OF FILING RULE TO PLEAD.

When a rule to plead is filed, and notice of declaration delivered on the same day, the Court will not stop to inquire what act was done first, and it is no irregularity that the rule to plead shall have been filed before the service of the notice of declaration.

R. V. Richards shewed cause against a rule, which had been obtained by *Chandlee*, for setting aside the judgment and execution in this case. It appeared from the affidavits on which the rule was granted, that the plaintiff entered his rule to plead on the afternoon of the 26th October, before three o'clock, and that at six o'clock on the same evening he served the defendant with notice of declaration. On the 31st the plaintiff signed judgment for want of a plea, and on the 1st November levied under a writ of execution. On the 4th November a summons was taken out at Chambers before *Bolland, B.*, for setting aside judgment and execution, on the ground that a rule to plead could not be entered until after declaration filed and notice given, and the matter was referred to the Master, who certified in favour of the defendant. No order, however, having been made by the learned Judge, the present rule was obtained. The case of *Bennett v. Smith*, 5 D. P. C. 353, being relied on, in which it was decided that the notice of declaration must be delivered before the rule to plead was filed, it was now objected that the application was too

late, and it was urged that the case fell within the rule laid down in *Hinton v. Stevens*, 4 D. P. C. 283, where it was held that an objection to a notice of declaration, on the ground of variance from the writ, must be taken within four days from the time of serving the notice, and that an intermediate Sunday counted as one of the days.

Chandleas stated that the summons was returnable at chambers on the 6th November, the 5th being Sunday, and urged that the defendant could not have come sooner.

Parke, B.—In the case cited the objection was in the nature of a plea in abatement for a misnomer; I think this application is in time.

R. V. Richards then urged that there was no proof that the rule to plead was filed before the declaration was served. It was true a *præcipe* was given before the office closed at three o'clock, but the rule might not have been entered until a period long subsequent to that.

Parke, B.—We are told by the officer that the instructions to enter the rule is tantamount to entering it. It is laid down in *Tidd's Practice*, p. 474, that a rule to plead may be entered on a *præcipe* with the clerk of the rules in the King's Bench, or with the secondaries in the Common Pleas, at any time after the notice of declaration shall have been delivered or filed.

Richards said that inquiry had been made at the Master's office in the King's Bench, and there the practice was to enter the rule to plead on the same day on which the notice of declaration was served, otherwise the defendant would have no extension of the time in which he was to plead. *Bennett v. Smith* was not an analogous case, for there the defendant lived at *Liverpool*, and the notice of declaration could not therefore have reached him until the day after the rule to plead was entered.

Lord Abinger, C. B.—We have sent to inquire the practice which exists in the King's Bench, and the officers say that the judgment in this case is regular in their opinion. It is the constant practice there to enter the rule to plead on the same day on which notice of declaration is delivered.

Parke, B.—The Court will not inquire at what time the two acts are done, when they are both done on the same day. In *Bennett v. Smith* the rule to plead must have been entered on the day before the notice of declaration was received by the defendant, and the case therefore differs from this.

Alderson, B.—It is better to adhere to the practice. Where two or three acts are done on the same day, the Court will take them to have been done in their regular order.

Rule discharged without costs.—*Aitman v. Canway*, M. T. 1837. Excheq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a select Committee.]

To extend the time limited by the 1 Vic., c. 30, for abolishing certain Offices in the superior Courts of Common Law, and to make provision for a more effective and uniform establishment of Offices in these Courts, and for establishing and ordaining Tables of Fees proper to be demanded and taken in these Courts. *Ld. Abinger.*

[This bill stands for second reading, but has not yet been printed, and it is expected that the arrangements will be completed before January, so as to render the postponement of the Act unnecessary.]

For regulating Charities. *Ld. Brougham.*

[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to children of tender age. *Mr. Serjt. Talfourd.*

To amend the Law of Copyright.

Mr. Serjeant Talfourd.

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. *Mr. Mackinnon.*

To facilitate the recovery of possession of Tenements, after due determination of the Tenancy. *Mr. Aglionby.*

[This bill is now in Committee.]

To enable Recorders of certain Boroughs to hold a Court for the recovery of Small Debts. 14th Feb. *Colonel Seale.*

To make better Provision for collecting and distributing the Estates of persons found Bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the borough of Finsbury.

Mr. Wakley.

LAWS OF PROPERTY.

To improve the tenure of Copyhold and Customary Lands. Att. Gen.
To alter and amend the Law relating to the Mortgages of ships and vessels.

Mr. G. F. Young.

To enable Tenants for Life of Estates in Ireland to make improvements in their Estates, and to charge the inheritance with a portion of the monies expended in such improvements. Mr. Lynch.

To enable Tenants for Life, and Mortgagors in possession of Lands in Ireland to grant Leases, and to enable Tenants for Life of Lands in Ireland to make exchange, and for giving a summary partition in all cases as to Lands in Ireland.

Mr. Lynch.

To enable married women, with the consent of their husbands, to pass their interests in Chattels Personal. Mr. Lynch.

To amend the 13 G. 3, for the better cultivation, improvement, and regulation of the Common Arable fields, Wastes and Commons of Pasture in this kingdom.

Lord Worsley.

[This Bill stands for second reading on the 20th December.]

To amend the 6 & 7 W. 4, for facilitating the inclosure of open and arable fields in England and Wales. Lord Worsley.

To render the owners of small tenements liable to the payment of the rates assessed thereon.

[This bill stands for second reading on February 7th.]

CRIMINAL LAW.

To authorize the summary conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs, and Chairmen of Quarter Sessions, to reserve points of Law in Criminal Cases, for the opinions of the Judges. 12th Feb.

Sir E. Wilmot.

That certain offences to which the punishment of Death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel.

Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes Magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime.

Mr. Barneby

[The third reading of this Bill is fixed for the 9th Feb.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intitled "An Act to amend the Representation of the People of England and Wales." 8 Feb. Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the Law for the trial of Controverted Elections, or returns of Members to serve in Parliament. Mr. Buller.

[This Bill has been brought in, and is now in Committee.]

To regulate the times of payment of rates and taxes by Parliamentary Electors, and to abolish the Stamp Duty on the admission of Freemen. Id. J. Russell.

[This Bill is in Committee.]

To define and regulate the lawful expenses at elections of Members to serve in Parliament. Mr. Hume.

MUNICIPAL OFFICERS.

For the relief of persons elected to municipal offices, and entertaining conscientious objections to subscribe the declaration required by the latter part of the 50th section of the Municipal Corporation Act.

[This bill stands for third reading.]

HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

THE EDITOR'S LETTER BOX.

A Correspondent informs us that in our List of Members of the Profession in Parliament we omitted the name of Mr. Robert Aglionby Slaney, the member for Shrewsbury, who was an eminent member of the Oxford Circuit, and retired from the bar about the year 1825.

The List of Barristers called in last Michaelmas Term will be given in the Supplement for this month.

We are not aware of any Society for the discussion of Legal Questions only, except the Law Students' Society, the meetings of which are held weekly at the Law Institution. There are several Societies, composed chiefly of lawyers, for the purposes of general discussion.

We have now reprinted several numbers, and complete Sets of the Legal Observer may be obtained of the Publisher. Subscribers desiring to have any separate numbers to complete their Volumes will be supplied with them on the usual terms for a short time to come. The first Ten Volumes with a General Index may be had for 5*l*.

The Legal Observer.

SAURDAY, DECEMBER 23, 1837.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HONAT.

THE PUBLICATION OF EX PARTE PROCEEDINGS.

It has long been established, that, on principles of public convenience, the ordinary rule is, that no action can be maintained in respect of a fair and impartial report of a judicial proceeding. "Trials at law, fairly reported," says Lord Ellenborough, "although they may occasionally prove injurious to individuals, have been held to be privileged."^a

But the publication of *ex parte* proceedings in criminal cases is not only not privileged by the law, but is regarded as a great misdemeanor. Where the evidence is *ex parte*, the party charged has no means of establishing a defence, and such premature statements tend to excite undue prejudices against the accused, and to deprive him of the benefit of a fair and impartial trial; and therefore, in several instances, the publication of matters of criminal charges contained in depositions before magistrates, has been held indictable.^b

Thus a criminal information was granted against the printer and publisher of a newspaper, for publishing the minutes of the evidence taken before a coroner's inquest on a charge of murder, accompanied by comments on the facts as they occurred.^c

The same point was argued at great length before the Court of King's Bench, in the case of *Duncan v. Thwaites*,^d and *Abbott, C. J.*, said, "This Court has, on more than one occasion within a few years, been called

upon to express its opinion judicially on the publication of preliminary and *ex parte* proceedings, and has on every occasion delivered its judgment against the legality of such proceedings, as was done by Mr. Justice Heath, in the year 1804, in the case of *The King v. Lee*."

And although the objections to the publication of *ex parte* statements do not apply so forcibly to civil, as they do to criminal proceedings, yet it seems that the publication of *ex parte* proceedings, even of a civil nature, when they are injurious to the characters of individuals, cannot be justified. For the communication of such *ex parte* proceedings may frequently be attended with great hardship to the individual, and can seldom, previous to the final decision, be of importance to the public, as containing any judicial information.^e

The same rule was also acted on in the cases of *Macgregor v. Thwaites*,^f and *Flint v. Pyke*,^g and has been, to a certain extent, adhered to in a very recent case,^h which was shortly as follows, so far as this point was concerned:—

The plaintiff was charged before the Lord Mayor with having fraudulently obtained the signature of a youth under twenty years of age to two blank stamped bills. An account of this proceeding was published by the defendant, and an action having been brought against him, he pleaded several pleas; but we shall merely extract such part of the judgment of *Tindal, C. J.*, as relates to the present subject.

"The second count of the declaration is, for the composing and publishing of a false and malicious libel; the libel consisting of

^a *King v. Fisher and others*, 2 Camp. 563.

^b *Id.* 1 Stark. 265. *Per Heath, J. Rex v. Lee*, 4 B. & A. 605.

^c *The King v. Fleet*, 1 B. & A. 379.

^d 3 B. & C. 556.

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^e 1 Stark. 269.

^f 3 B. & C. 24.

^g 4 B. & C. 473.

^h *Delegal v. Highley*, 3 Bing. N. C. 950.

the publication, in a newspaper, of a police report of the same proceedings before the Lord Mayor, which form the subject-matter of the first count. And the fourth and sixth pleas are each pleaded to the second count, 'with the exception of so much of the count as charges that the defendant composed and published the libel therein mentioned, intending to cause it to be believed that the plaintiff had been taken into custody on a criminal charge.' To this plea various objections have been assigned for cause of special demurrer, and have been urged in argument before us. We think, however, an objection appears upon the face of the plea, which renders it unnecessary for us to give any opinion, either upon the formal objections which have been urged against its validity, or on the more general question which has been raised, viz. whether the publishing of a fair and correct account of proceedings, *ex parte*, upon a charge before a magistrate, is or is not a privileged publication. For each of these pleas alleges, as a ground of justification, "that the supposed libel contains a full and true account of all that took place before the Lord Mayor, touching the said charge or complaint." But it is an established principle, upon which the privilege of publishing a report of any judicial proceedings is admitted to rest, that such report must be strictly confined to the actual proceedings in Court; and must contain no defamatory observations or comments from any quarter whatever, in addition to what forms strictly and properly the legal proceedings. The principle is so laid down in the case of *Lewis v. Clement*, 3 B. & Ald. 702, and in other cases. But in the libel set out in the declaration, after the statement of the evidence given before the Lord Mayor, an observation is inserted of Mr. Hobler, the Chief Clerk, "that it was exceedingly improper, under any circumstances, to obtain the signature of the complainant, a mere boy, to bills of exchange." This appears to us to be a substantive reflection on the character and conduct of the plaintiff, which is altogether unwarranted; in two respects, it was not made in the course of any judicial proceeding, by any one whose duty called upon him to make it; it was uttered by a person, who, for this purpose, must be considered as an entire stranger; it is the same as if made by any by-stander in the Court. Again, it was not warranted by the facts which were brought in evidence against the plaintiff, which amounted not to a charge of obtaining signatures to blank

bills of exchange, but to a charge of obtaining the signature of a young man to two blank pieces of paper which had been stamped with stamps for bills of exchange. The libel, therefore, contains a serious reflection on the character of the plaintiff; which the privilege set up in the fourth plea, supposing it to exist, does not extend to justify; a reflection, the truth of which is not justified by the facts stated in the sixth plea; and on those grounds, we think both these pleas are bad."

THE HILARY CLUB REDIVIVUS.

I FLATTER myself that very few of the constant readers of the Legal Observer can have forgotten the account which I gave last year of the formation and proceedings of the Hilary Club. It is not to be supposed that, although its proceedings have not been communicated to the world through the medium of these pages, it has ceased to exist. On the contrary, in no preceding year has it flourished so vigorously, or been carried on so pleasantly, as in the year which is about to close; and I am glad to think, now that I am again permitted to give some further account of it, that my former papers were not mere useless pleasantries, but have been attended with some benefit to the profession. Who has forgotten the complaints of the chimney-pots of the Old Square? Since they were made, I am happy to say the ground for them has been removed. A new race of chimneys has succeeded, and we may now walk along that venerable quadrangle without thinking whether we have paid the premium on our life-insurances. I might also point out other good results arising from my previous papers.

My great object, however, is to leave all minor matters, and to give my readers some intelligence respecting an event which is about to occur, of the greatest interest to the profession, preparations for which have been some time in agitation, and which have been confidentially communicated to the Club. Without any further preface, I will mention that this is nothing less than a grand fête to be given to our gracious and youthful Queen on her accession to the throne, by the Inns of Court, during the Christmas holidays.

I need not remind the learned reader that there are plenty of precedents for this. In these pages a full account has already been given of the entertainments heretofore

given by the Inns of Court to the Kings and Queens of England;* and it has at last been settled that a grand masque and revel, after the fashion of the olden time, shall be proceeded with, as soon as some preliminaries are arranged. Of course the greatest secrecy has hitherto prevailed with respect to every thing connected with it; and even now I can only give a partial account, or rather some scattered hints, of what is to be done; but I hope, in succeeding papers, to be able to give the fullest details.

The reader may imagine that, as on all similar occasions, considerable difference of opinion has existed as to the exact kind of entertainment that should be given. The Inner Temple wished that the Queen should come by water, and should simply dine in their Hall. The Middle Temple considered that a breakfast would be sufficient. Lincoln's Inn objected to the coming by water, and was supported in this by Gray's Inn, and at last carried its point. Both these last Societies also thought that a breakfast would not do, but that the Queen must come to dinner. It has also been arranged, but not without great discussion, that the dinner should be given in Lincoln's Inn Hall, as the most central situation. The precise line which her Majesty will take is however not yet settled. It is probable that, to avoid the difficulty of entering the city, she will proceed down Regent Street, Oxford Street, and Holborn, and turn down Chancery Lane, and thus through the archway into Lincoln's Inn.

The nature of the entertainment, and the place in which it should be given, being fixed, great debates arose as to whether there should be a mere dinner, or whether there should be added thereto a masque and revel. This, at last, was carried, as most consistent with precedent, and, as it was supposed, most suited to the taste and age of her Majesty. A mere dinner, it was considered, would be, as all mere legal dinners are, a very dull affair; but a masque and revel, even by lawyers, would add considerable interest to the entertainment. It has been resolved, however, that it shall in some degree smack of the profession. It has therefore been determined to confer the degree of Barrister at Law on her Majesty, the Mistress of the Robes, and two Ladies of the Bedchamber, to be named by the Queen: and I understand that the ladies are now reading Lord Coke, previous to

their supposed examination. They are not perhaps aware that no examination is necessary. Her Majesty's knowledge of law is said to be considerable, and there is nothing else at present discussed at Court. I understand that at the most fashionable parties scandal is entirely superseded by the doctrine of estates, and that young ladies, instead of asking about the last new novel, inquire only as to the last edition of Sugden on Powers. So extraordinary are the caprices of fashion, and the influence which her Majesty has in rendering the driest matters interesting!

When the ceremony of creating her Majesty and her ladies barristers at law is gone through, the masque and revel will commence. The masque has been written for the occasion by an eminent legal poet; but I am not at present able to give even a sketch of it. It is, however, an allegorical representation of many recent events connected with the profession. Among other things, the recent dispersion of the ancient order of Serjeants is alluded to, in a striking and affecting manner. This will of course be represented by the remaining members of that learned body, and their picturesque costume will greatly heighten the effect. They will first appear in their red robes, next in their blue gowns, and thirdly in their black gowns. They will then appear in funeral dresses, and form a striking *tableau* representing the extinction of their order. This will be the only incident in the whole masque which is intended as an appeal to the heart, and it is thought that it may move the Royal Guest to restore them to their ancient rights.

After the masque, the solemn dance and revel will commence.

The three Judges of the Courts of Equity, the Lord Chancellor, Master of the Rolls, and Vice Chancellor, will first perform a *pas de trois*.

The ten Masters in Chancery will next dance a quadrille.

The Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, will then perform the figure dance known by the name of the Country Bumpkin. The Chief Justice of the Queen's Bench will wear the hat.

The Judges of the Bankruptcy Court will next walk a minuet.

The Queen's Counsel will then dance a gallopade; and the revel will end with a country dance by the whole company, in which it is supposed that her Majesty will favour the Lord Chancellor with her hand.

* See 14 L. O. 473.

thereof (in the manner and for the purposes in the said recited act mentioned) one or more assessment or assessments upon the lord or lady of such manor, and the persons being owners or occupiers of such commons, or their agents or managers, shall or may, at their option, be made, levied and collected by such person and persons and allowed in such manner as the lord or lady of such manor, and the major part in number and value of the owners or occupiers of such commons present at a meeting to be held within the said manor, in pursuance of fourteen days' notice to be given by the lord or lady, or his, her or their agent, in the manner in the said act mentioned, of the time and place of meeting for that purpose, shall direct and appoint in that behalf; and the money thereby raised shall be employed and accounted for according to the orders and directions of the said lord or lady, and such majority of the owners and occupiers as aforesaid, in the improvement of such commons, from time to time, as need shall require; and the said assessments shall, by virtue of a warrant under the hand and seal of one justice of the peace, be levied by distress and sale of the goods and chattels of every person so assessed and not paying the same within ten days after being demanded, rendering the overplus of the value of the goods so distrained (if any) to the owner or owners thereof, the necessary charges of making such distress and sale being first deducted.

And that there are various common lands, not being stinted commons, for the fencing, draining and improvement of which the provisions of the said recited act may be beneficially applied;

It is therefore proposed to be enacted—

1. That so much of the said recited act as is hereinbefore mentioned shall extend to all cases of common or waste land, whether the same shall be within the precincts of any manor or otherwise, and whether the same shall be stinted or unstinted; and all monies which may be raised under the authority of the said recited act, by the ways and means in the said recited act mentioned, shall be expended from time to time in the manner and under the directions in the said recited act contained, in the fencing, draining and improving such common lands from time to time as may be expedient.

2. That no assessment shall be made on any person or persons whomsoever for the purposes aforesaid, who may only possess a common of turbary on such commons; but such assessments shall be made and levied exclusively on the lord or lords, lady or ladies, and the several persons possessing rights of common of pasture on such commons.

3. That the interest of the several persons, owners of the said common lands, and the commonable rights thereon, shall for the purposes of this act be ascertained by the assessments of the said common lands, or of the several lands and tenements in respect of which such rights of common are claimed and

enjoyed, or of the said rights of common themselves, to the rate which may be subsisting for the time being for the relief of the poor in the several parishes or townships wherein such commons may be situate.

4. That it shall be lawful for all persons who shall think themselves aggrieved by any thing which may be done by virtue of this act, or the said recited act, to appeal to the general or quarter sessions of the peace which shall be held in or for the county, riding or division wherein the common lands or the greater part thereof in respect of which the matter of complaint may arise shall be situated, or at any adjournment thereof, within $\frac{1}{2}$ calendar months next after the cause of complaint shall have arisen, first giving or causing to be given *twenty-eight* days' notice in writing to the parties intended to be appealed against, setting forth the cause and matter of such appeal; and the appellant, on the hearing of such appeal, shall not be allowed to go into any other matter than what is stated in his said notice; and the justices, at their said quarter sessions or at any adjournment thereof, are hereby authorized and required to hear and determine the matter of every such appeal, and to make such order in every such case respectively, and to award such costs as to them in their discretion shall seem meet, and by their warrant to levy such costs by distress and sale of the goods and chattels of the parties adjudged to pay the same, rendering the overplus (if any) to the respective owners of such goods and chattels, after deducting the reasonable charges of such distress and sale; and every determination of the said justices shall be final and conclusive on all parties concerned; and no such complaint, appeal or proceeding shall be removed or removeable by *certiorari*, or any writ or proceeding whatever, into any of her Majesty's courts of record at Westminster or elsewhere; but in case such appeal shall appear to the said justices to be frivolous, vexatious or without foundation, then the said justices shall award such costs to be paid by the appellant or appellants as to them in their discretion shall seem reasonable, and to be levied in manner aforesaid.

DELAYS IN THE COURTS IN SCOTLAND.

A correspondent wishes the attention of our readers to be called to the grievance to which our northern neighbours are subjected in the Court of Session in Scotland, in regard both to expense and delay. It appears that in an action for a debt alleged to be due from a partner in a society, it will be four years before the case can be ready for trial. Whilst so many complaints are made against the delays and expenses, which are of far less magnitude in this part of the Empire, it is suggested, not inappropriately,

that some of our brethren, natives of the north, should look a little at home.

The following is the report of the case in the House of Lords on the 5th instant.

The Earl of *Devon* presented a petition from Henry Jones, a magistrate and settler in Canada, complaining of the great loss and inconvenience to which he had been subjected in consequence of his having been detained in this country pending a suit that had been instituted against him in the Court of Session, Scotland, and praying that steps should be taken to expedite the business of that court.

The petitioner stated, that he has now had a suit commenced against him above three and a half years, at a cost of upwards of 200*l.*, and that it is not yet brought to a jury trial, although he has purposely refrained from proceedings on his part, which, in promising advantage, might still protract that operation and enhance expense.

That having been brought from the remote extremity of Upper Canada, at much cost and inconvenience, two years since, under the expectation of an early decision, and the assurance that his presence was indispensable, he still sees no defined prospect of a termination to the suit, nor a dispensation of his personal attendance.

That the said suit has passed on from term to term without, in the technical phrase, having been overtaken, and being retarded on one occasion by a principal adverse witness absenting himself.

That the petitioner can have little hope in any case of a favourable termination to his cause, since his opponents, being wealthy persons, may not only protract the suit in the Scotch courts, if the award of the jury should prove unfavourable to them, but bring it, by appeal, before the House of Lords.

The petitioner therefore, earnestly prayed the House to take early and efficient steps, by the appointment of additional judges in the Court of Session, by simplifying the modes of appeal, or by such other means as may seem meet, to render justice substantially accessible to all classes of the Queen's subjects, who are too often the victims of protracted torture.

ON THE

RE-ADMISSION OF ATTORNEYS.

To the Editor of the *Legal Observer*.

SIR,

THE case of *Wilton v. Chambers*, reported in your last week's *Legal Observer*, (p. 123,) and the dictum of Lord *Denman* thereon, seems still to involve the question in some doubt,—whether an attorney who has been admitted, but does not take out his certificate the first year, can legally practise on his afterwards taking out his certificate, without being re-admitted? I have read, I believe, all the com-

munications in your Journal on the subject, but do not perceive that any of your correspondents lay weight upon that, which I consider, shews the meaning of the section in the act under which this question falls, *viz.*, "Provided that nothing herein contained shall be construed to prevent any of the said Courts from re-admitting any such person on payment of the duty accrued since the expiration of his last certificate, and such further sum, &c."

This proviso only relieves persons upon condition (under the sanction of the Court,) of paying up the arrears accrued since their last certificate; if therefore a person has taken out no certificate since his admission, he cannot come within the meaning of this section; and surely it can never for a moment be argued that such person has no relief at all.

I therefore submit that the act clearly shews by the section in discussion, that when a person has once commenced practice and taken out his certificate, that he shall not one year do so, and the next not; as by this unsteady and fickle conduct the revenue might easily be defrauded, and people taken off their guard; but that having once elected to practise as an attorney, and afterwards ceasing, he must apply to the Court for that indulgence which the proviso at the conclusion of the section before referred to gives him; but on the other hand, a person who has been admitted and taken out no certificate does not come within the meaning of the act, and has therefore no occasion on his commencing practice and taking out his first certificate, to apply to the Court at all. The importance of the question to many of your younger readers, who have acted on the decision made in *Es parte Jones*, (2 Dowl. P. C. 451.) and who if aware of it would rather cut off their right hand than be illegal practitioners, must be my apology for troubling you again on this often-discussed subject.

LEGALIS.

[In *Hilleary v. Hungate*, 3 Dowl. P. C. 56, Mr. Justice *Littledale* concurred in the decision of Mr. Baron (then Justice) *Parke* in *Es parte Jones*. Ed.]

SIR,

By your report of the case *Wilton v. Chambers*, contained in last week's *Legal Observer*, Lord *Denman*, in his judgment, seems to have made some remarks relative to Mr Justice *Parke's* decision in the case of *Es parte Jones*, (2 Dowl. P. C. 451,) that will tend, I am afraid, to shake the authority of that decision. His Lordship evidently leaned towards the case of *Es parte Nicholas*, (6 Taunt. 408,) which runs directly counter to the former; and I think he has so far invalidated the case of *Es parte Jones*, that the question remains as much open for discussion as ever. As I intend to apply for admission next Easter Term, I should be glad to know your opinion on the subject; for, supposing I am fortunate enough to pass my examination, and to get admitted, being

in a very delicate state of health, it is my intention to travel on the Continent for about two years, which I shall certainly be unable to do if, on my return, I am compelled to be re-admitted. Without discussing the odious nature of the tax, the statute that created it, and the decisions that have been made in pursuance of it, I, in behalf of myself, and many of your subscribers, who will be immediately concerned in the subject, beg the favour of your advice.

W.

[The cases on this subject are collected and discussed in Vol. XIII, p. 259; and the view we there took of the question is confirmed by our correspondent "Legalis." The attention of the Court in the case of *Nicholas* was not called to the terms of the statute, which apply to persons "neglecting" to take out their certificate. Independently of the construction of the statute, there is this question, which seems to come within the jurisdiction of the Court,—namely, whether an attorney, once admitted, can defer the commencement of his actual practice for an indefinite period? As the Court has refused to re-admit persons who have *ceased* practising, in one case for 19 years, and in another for 30 years, there should, on the principle of those cases, be some limit to deferring the commencement of practice. In the case put in the second letter, the party, after passing his examination, might defer his admission for the present; and there can be little doubt that the Court would admit him after a reasonable absence, occasioned by ill health, particularly if he continued his professional reading. Ed.]

SUPERIOR COURTS.

Lord Chancellor's Court.

TRUSTS OF A CHAPEL.

A chapel erected chiefly by the subscriptions of the congregation, and held upon lease for religious worship, according to the doctrine, discipline, and rules of the Established Church of Scotland, is a trust for that purpose, and not to be used for worship according to any other form; though a majority of the congregation should assent it against the minority. Such a trust is a fit subject for a bill, and not for bill and information.

Between the years 1798 and 1800, a new chapel was built in Woolwich, for the use of the Scotch Presbyterian congregation there

established, and for maintaining among them, the doctrine, discipline, and worship of the Established Church of Scotland, and to be always under the ministry of a person licensed according to the regulations of that church. Dr. Blythe, who was then minister, was so licensed. The funds for building the chapel were raised by subscription of persons belonging to the Scotch church at Woolwich, and by collections in the Scotch churches, under the London Presbytery. There was also a rent-charge of 30*l.* a year, left by Mrs. Drake upon trust for the benefit of the minister of the Presbyterian chapel at Woolwich and the Board of Ordinance allowed 20*l.* to the minister in respect of the soldiers of the Presbyterian persuasion at Woolwich. The Messrs. Powis, on whose land the chapel was built, granted a lease for sixty-one years of the same, and of the piece of ground on which it stood, to Dr. Blythe, the elders of the Scotch congregation, and the trustees of Drake's donation, their executors, administrators and assigns, upon trust to be disposed of as they and the elders and trustees for the time being should appoint, and until such appointment upon trust to permit the same to be used as a place of religious worship according to the custom, rules and regulations of the Church of Scotland. The congregation kept together under the ministry of Dr. Blythe, up to his death in 1829, when they elected a gentleman of the name of Scott to be their minister, and from that time dissensions sprang up among them.

The bill was filed in 1833, by two of the trustees of Drake's donation, one of them being also an elder of the chapel, against the other elders and trustees, and one Martin, in whom, as the sole survivor of the original trustees named in the lease, the legal estate in the chapel was vested; and it stated and charged, among other things, besides the facts before mentioned, that after Dr. Blythe's death, the defendants, in breach of the trust reposed in them, and in violation of the purposes to which the chapel had been originally devoted, and of the rules of the Established Church of Scotland, had employed seceders from that church as ministers of the chapel, and that they intended to elect one of such persons to be minister of the chapel, and to change the purpose for which it was built. The bill further charged that the defendants were acting in pursuance of a design to frustrate the trusts, and claimed a right to do so as the majority of the trustees and elders of the chapel, to the exclusion of the plaintiffs; and it prayed for a declaration that the said chapel was held on trust for religious worship according to the doctrine and discipline of the church of Scotland; and that no person was eligible to be minister of the chapel who was not a licentiate of that church; that the defendants might be ordered, in performance of their trust, to elect a person duly qualified according to the usages of the Scotch Church, to be minister of the chapel.

The statement and prayer of the bill are set out more fully in the reports of interlocutory

orders made in the suit, 1 Mylne & Keen, 446; 6 Sim. 186; 10 Leg. Obs. 346; and 12 Leg. Obs. 43.

The cause came on to be heard before the Lord Chancellor early in the present year.

Mr. Wigram and Mr. Blennan, were counsel for the plaintiffs; Mr. Agar, Mr. Daniel, and Mr. Chandless, were for the defendants.

The Lord Chancellor, in giving his judgment, stated the character in which the plaintiffs and defendants came before the Court, and the object of the suit. The only questions for his consideration were, whether the chapel and premises were held upon the trusts alleged in the bill, and whether the object of the trust was as it was there stated. In considering the first of these questions, he had no occasion to look farther back than the year 1798. By the indenture then made for the building of a new church, an application was directed to be made to the Scotch Church in London, and the building was to be for the accommodation of persons of the Scotch persuasion in Woolwich. They called themselves the Scotch Presbyterian congregation. By the lease granted in the year 1800, the chapel was to be held on trust, as a Scotch Presbyterian church, in the manner and according to the usage of Scotch churches or kirks; and not to be used for any other purpose. There was an entry in the minute book, kept by the minister and elders, that "no minister was to be appointed pastor of the congregation, who was not licensed to preach according to the Established Church of Scotland;" and again, that the church was built for religious worship according to the doctrines and discipline of the church of Scotland. In the year 1811, there was a question whether there should be singing at the service, which is contrary to the service of the church of Scotland, and it was resolved in the negative. Dr. Blythe died in the year 1829, and then Mr. Scott applied to be elected minister in Dr. Blythe's place. He was examined by the Presbytery in London, and was found not to hold up the doctrines of the Established Church of Scotland. The Presbytery of Paisley had, in fact, withdrawn their licence from him. Notwithstanding, he continued by the permission of the defendants, to preach in this church up to 1832. Taking all these matters into his consideration, his Lordship was of opinion, that the church and premises had been held for thirty years upon the trusts stated in the bill; and that the conduct of the defendants in allowing Mr. Scott or any other person to preach doctrines different from those of the church of Scotland, was a breach of trust, as being a departure from the rules and regulations entered in the minute book from 1800. If his Lordship had any doubt of his own opinion, he had in support of it the authority of the cases of *Cragdallie v. Arkman*,^a *The Attorney General v. Pearson*,^b and *Foley v. Wontner*.^c

Another question was, whether the defen-

dants, being the representatives of a majority of the whole congregation, had a right to depart from the first arrangement, and from the purposes to which the trust was then devoted. He had already declared that that first arrangement was a trust. After the death of Dr. Blythe, many of the old members withdrew from the congregation, and other persons joined; that was after a departure from the old trust; so that it would be difficult to say on which side the majority of the old adherents was. He was of opinion, however, that the majority could not alter the fundamental rules, and change the purposes of the trust. The object of the rules and regulations was to preserve unanimity. Upon the whole, his Lordship was clearly of opinion, that the defendants committed a breach of trust. That this was a proper subject for a bill, and not for bill and information, he had no doubt, on the authority of the cases *Davis v. Jenkins*,^d and *Foley v. Wontner*.^e He had no doubt of the plaintiffs' title to sue. They were *cestui que trusts*, and had a right to sue on behalf of themselves and others; and they were so entitled when the wrong, of which they complain, was committed. The plaintiffs were, therefore, entitled to the decree for which they prayed, and also to their costs, to be paid out of the fund: he could not throw them on the defendants. No costs to the defendants.

Milligan v. Mitchell, at Westminster, Nov. 17, 1837.

Equity Beschequer.

PRACTICE.—MASTER'S REPORT.

The Master's report should be confined to the inquiry directed by the order of reference. An order to inquire into the increased value of an estate to a purchaser by reason of the deaths of persons for whose lives parts of the estate were held at the time of the contract to purchase, will not warrant an inquiry into the increased value by reason of the increased ages of the other lives in the leases. It is irregular in the court to make, upon petition, an addition to a decree. A petition of re-hearing in this court will not be received after six months from the decree.

The bill was filed in 1817 by Brooke and others against Chempernowne, for specific performance of an agreement entered into by him with them in 1812, for the purchase of the borough, manor, and lordship of Honiton, in the county of Devon, with all its rights, royalties, &c. for the sum of 70,000*l.* to be paid in the manner mentioned in the agreement. Most of the lands and tenements in the borough had been leased out to tenants for terms of years for lives; and the agreement contained a covenant that the purchaser should pay the vendors for the increased value of the premises, in consequence of the deaths of any

^a 1 Dow. 1. ^b 3 Meriv. 353, see 418.

^c 2 Jac. & W. 245.

^d 3 Ven. & B. 151. ^e 2 Jac. & W. 245.

of the persons for whose lives the same had been held by the tenants, as should die after the month of September, 1811, up to the completion of the contract; the said value to be estimated by arbitrators, and the purchaser was to have interest in the mean time on all money paid into a banking-house by him towards the purchase. The increased value was ascertained in 1816; a large sum had been then paid in by the purchaser, and his solicitor sent to the agent for the vendors a draft conveyance, which was approved of and returned, but no conveyance was executed. Champemowne filed his answer to the bill in 1818, but in consequence of the deaths of parties, the cause was not heard until 1821, when a decree was made referring it to the Master to inquire as to the title; and if he should find that the vendors could make a good title, then to inquire what deduction from the purchase-money should be made in respect of inaccurate descriptions of the ages of persons for whose lives any of the premises comprised in the contract were held; and also to inquire how much was the increased value of the premises to the purchaser by the falling of any of the lives. The Master made several reports, which were as often excepted to. By his report in April, 1831, he stated the increased value of the estate to be then 2168*l.* 5*s.* 2*d.*, in respect not only of the falling of some of the lives, but also of the wearing of others. The representatives of the purchaser (then deceased) took exceptions to the report on the latter ground. Lord Lyndhurst, C. B., inclined to think that the Master's calculation of the increased value was reasonable, but that it was not warranted by the order of reference, and he directed the exceptions to stand over, with liberty to the plaintiffs to present a petition of re-hearing. The plaintiffs did, accordingly, present a petition of re-hearing, but it was dismissed, on the objection being taken that it was not presented within six months from the date of the original decree.^a The plaintiffs afterwards presented a petition, complaining of omissions in the original decree, and praying, by way of supplement thereto, that the Master should be directed to inquire into the increased value of the estate by reason of the wearing of the lives or increased ages of the parties for whose lives the premises were held, and that he should bring down his calculation on that head, and also his calculation of the increased value, by reason of the falling of lives, to the date of his report. In July, 1831, the petition came on for hearing, and Lord Lyndhurst, C. B., made an order according to the prayer thereof, by way of supplement or addition to the original order of reference. The defendants appealed from Lord Lyndhurst's order to the House of Lords, and that order was there reversed in July, 1835, on the ground of irregularity.^b

Mr. Bethell and Mr. Coleridge now, in support of the exceptions to the report of April, 1831, which had stood over, said, after de-

tailing the proceedings, that the object of the exceptions was carried into effect by the House of Lords in reversing the order of Lord Lyndhurst. There was no direction in the original decree to inquire into the increased value of the estate by reason of the increased ages of the lives. The Master's inquiry should be confined to the falling of lives, for which also the agreement between the parties in 1812 provided. Upon all these grounds they submitted that the exceptions should be allowed.

Mr. Swannston and Mr. Lynch, for the defendants, opposed the exceptions, which, they contended, were not recognised by the decision of the House of Lords, as that was directed only against the irregular order, making, upon petition, an addition to a decree.

Lord Abinger, C. B.—The original decree did not justify the Master in the part of that report to which the exceptions were taken. His duty was to confine himself to the inquiry directed, and he went beyond the terms and meaning of the order of reference in reporting on the increased value of the estate by reason of the wearing or increased ages of the lives for which any parts of the estate were held. The exceptions were, therefore, to be allowed.

Brooke and others v. Champemowne and others.—At Westminster, November 22, 1837.

Queen's Bench.

[Before the Four Judges.]

QUO WARRANTO.

A party who claims the benefit of the provisions of the 7 W. 4, and 1 Vict. c. 78, which by section 1, declares all corporate elections good, notwithstanding any defect of title in the officer presiding at such election, must, under the 20th section, if proceedings had, before the passing of this act, been commenced against him, take steps to stay those proceedings, and pay the costs already incurred. The two sections must be construed together, and the conditions imposed by the 20th, must be complied with in order to bring into operation the provisions of the first section.

It seems that if a rule is opened after being made absolute by consent, the party getting it opened is not at liberty to use affidavits sworn after the rule was made absolute.

And also that a party who took part in an election, without at the time making any objection that the election was informal, cannot afterwards appear as a relator to impeach it.

The Attorney General moved to make absolute a rule calling on the defendant to shew cause by what authority he claimed to exercise the office of auditor of the borough of Carnarvon. This rule had been formerly made absolute, but had since been opened by a rule obtained in the Bail Court, and granted by Mr. Justice Patteson.

Sir W. Fullett, and Mr. R. V. Richards shewed cause against the rule for the *quo war-*

^a See 1 Young, 344.

^b 3 Clark & Finnelly, 4.

ments. The two chief objections in this case to the title of the defendant are, first, that there was no proper elective body at the time of the election; and secondly, that there was no proper presiding officer at the election. The last of these two objections is the most important, and affects all the others. This objection cannot now be sustained. The present rule must be discharged, in accordance with the provisions of an act passed in the course of the last session of parliament. The objection that there was no proper presiding officer at the election, is answered by the 7 W. 4, and 1 Vict. c. 78, by the 1st section of which it is enacted that "no election of any person into any corporate office, which shall take place after the passing of this act, shall be liable to be questioned by reason of any defect in the title, or want of title, of any person before whom such election may have been had, provided that the person before whom such election shall be had, shall be then in the actual possession of, or acting in the office giving the right to preside at such election; and subject and without prejudice to the provisions for discontinuing proceedings hereinafter contained, all elections into any corporate office, since 25th Dec. 1835, and all acts done in right of their office by the persons chosen, shall be good to all intents and purposes." The provisions there referred to, are in the 20th section of the new act, which provides "that every proceeding commenced before the passing of this act, and still pending in the Court of King's Bench, against any person, upon any ground on which it is herein declared that the validity of the election into any corporate office shall not be questioned, or for the purpose of bringing into question the validity of any election or act which is herein declared to be good, shall be discontinued immediately upon the passing of this act, upon payment of the costs incurred up to that time." [Lord Denman, C. J.—Have you paid the costs?] No; nor is the defendant liable to pay them.

The *Attorney General*.—If the defendant asks that these proceedings should be discontinued, he must do it upon the terms of paying the costs, as provided by the recent act.

Sir W. Fullett.—The defendant's title is now good. The objection to it is cured by the recent statute. No judgment of ouster could now be given against him. The rule therefore is utterly useless. The other party might have got costs, if the proceedings had been well founded, but it was his duty to apply for them. The defendant was not bound to take any step; the first section absolutely cures the defect of the defendant's election. [Mr. Justice Patteson.—Who is to determine whether those proceedings have been well founded or not? If the defendant says that he will not pay the costs as he has a good title, then the relator must go on to try the question. So that it appears that the act of parliament is not imperative.] But it is at least imperative to the extent of making the election good, subject to the provisions of the 20th section, so that this Court has not now the power to say

that this rule shall be absolute. Now who is to put the 20th section in operation? Certainly not the defendant; there is nothing in it calling on him to do so. The act, by absolutely making the election good, enables the party not merely to be declared entitled to put an end to the suit, but forces the Court to put an end to it. Under the positive and precise terms of the recent statute, there is no question, as in the newspaper acts and others of a similar sort, whether there are exceptions made as to actions already commenced; but there is an absolute declaration, that all titles shall be good, and all things done under them valid to all intents and purposes. The 20th section directs that all proceedings shall be discontinued on the payment of costs up to that time. [Mr. Justice Coleridge.—If we discharge the rule on this objection, shall we not be putting an end to the effect of that provision, which says that the proceedings shall be stayed on payment of costs?] The other party ought to have applied for the costs in the regular manner when the act came into operation. [Lord Denman, C. J.—Do you say that you have a good case, in answer to this rule, independently of this act of parliament?] We have. [Lord Denman, C. J.—Then we think that we cannot avoid hearing you upon it.] It is admitted that there were only two aldermen elected at this time; but there was the proper number of town councillors. They elected the mayor, and he presided at the election which is now impeached. The defect, if at all, in fact, existed at the first election of town councillors. There is therefore, nothing in the objection; but at all events, the present relator has no right to make it. In the first place, it is against good faith, for the election was made with the concurrence of the party who now puts forward the objection. That alone, disqualifies him from being a relator. In *Rex v. Morlock*, a party who had acquiesced in an election, was not afterwards allowed to dispute the validity of that election, on an objection to a bye law, of the existence of which he was fully aware at the time of the election. Under the old law therefore, the present relator could not have appeared in Court to move this rule. The rule has not been altered in that respect, and he is therefore incompetent as a relator upon that ground. Another objection to his competency is, that he is not now a burgess, on the burgess-list of the borough. On every ground therefore, this rule must be discharged.

The *Attorney General* and Mr. J. Jarvis, in support of the rule.—The intention of the recent statute has been mistaken. [Lord Denman, C. J.—We wish first of all to hear you on the point as to the competency of the relator.] To meet the difficulty raised on that point, it is necessary to refer back to the history of this case. This rule, together with several others relating to the same election, was obtained in Michaelmas Term, 1836. When the time came for them to be argued upon motion, notice was given that no cause

would be shewn against the rules *nisi* being made absolute. The rules were therefore made absolute, but have since been opened, on condition that the other side should not put in fresh affidavits. Since then, two or three persons, and the gentleman who had acted as attorney in the matter, have made affidavits, the effect of which is, that at the time for shewing cause against the rule, they were not perfectly aware of all the facts, and were not prepared to answer the rule; but now they object that Mr. Edwards, the person on whose behalf the rule was obtained, was not a good relator, he not being upon the burgess list of the borough. It is clear that this knowledge, obtained long after the notice that cause would not be shewn against the rules, but which might have been obtained in the first instance, cannot now be imported into the case. The rule was properly made absolute at the time, and the Court will not in this manner re-open it.

Lord Denman, C. J.—Some complication and difficulty have arisen in this case in consequence of the Court wishing to wait till an act of parliament should come, to remove objections which had occasioned the litigation respecting this borough. The act has come, but instead of removing, seems to have increased the difficulties, as was not unlikely to be the case, with a piece of retrospective legislation. The first question we have now to consider is, whether we can attend to circumstances which have been stated in affidavits made since the period when this rule might have been discussed and decided, and since the rule was in fact and form made absolute. I think that we are not at liberty to do so. As to the point that Mr. Edwards is not a good relator, on the ground that he was not on the burgess list when the rule was granted, I do not think that we can now listen to that objection; for we cannot look into the affidavits, and the objection no where else appears upon the proceedings. As to the other objection, that the election was made with the concurrence of the party now seeking to impeach it, I think that that would have been a good objection, if it had been brought before the Court at the proper time, for the Court would not have suffered a man to come here as a relator, nor even I should say, as a witness, to do any thing to get rid of something like a bargain into which he had entered. But as the matter now stands, the defendants must be thrown back to the time when the rule was made absolute. What is the consequence of that state of things? We are bound to dispose of this rule, and if we find objections to the election, that parties are not prevented by their own acts from taking, then the rule must be made absolute, unless the recent statute refuses us the power to interfere. What does that statute say? It says, that notwithstanding the bad title of the presiding officer, those who are elected under his presidency shall be declared duly elected. That provision is, however, applied conditionally, namely, subject to the operation of another section of the same sta-

tute; which other section imposes on the party taking advantage of the statute, the duty of paying costs. But if he does not come forward and stay the proceedings on payment of costs, as he may not do, but may choose to go on to the last, the proceedings must continue in the ordinary way. So that there is a case in which, even under the provisions of the new statute, the case may be kept alive, though it may be true that there can be no effective judgment given against the defendant, and no actual ouster awarded. The objection to the right of this defendant to his office, was good at the time it was originally taken, and the relator was not disqualified. The title of the defendant was defective, and that defect has not been cured, but upon a condition to which the defendant has not thought fit to resort. The rule must therefore be absolute. In one respect I am sorry to be obliged to come to a decision which appears to be likely to entail a further and a needless expense upon the parties; but they might have stopped the proceedings by adopting the course pointed out by the statute; and they are not entitled to its benefits if they will not submit to the conditions it imposes upon them.

Mr. Justice Patterson.—This case was before me in the Bail Court, and if I had insisted upon seeing the reason why the party objected to the relator, I should not have granted the rule. Unfortunately I took it for granted that there was a good objection to him, and I granted a rule, which has led to some useless litigation. It now appears that the parties applying for that rule had not a sufficient excuse for not coming into Court before. They knew of the fact on which the objection to Mr. Edwards was founded, but they omitted to make use of it. They afterwards came and asked to be let to take this objection to Edwards, and I permitted them to be let in. I do not now think that they can support their objections, and the rule must therefore be made absolute, unless the new statute peremptorily and without condition restricts us from adopting that course. I do not think that it does so. I am of opinion that the party, in order to take advantage of the statute, must, as a condition of his doing so, pay the costs incurred up to the time at which he claims the benefit of its provisions.

Mr. Justice Williams.—I am entirely of the same opinion. There is no ground, except on the affidavits, capable of being presented to the Court, on which this relator can be impeached, and we cannot look at them. I fully agree, that in order to bring the recent act of parliament into operation on a case of this kind, the party desirous of staying the proceedings must himself take the proper means of doing so, and must pay the costs already incurred.

Mr. Justice Coleridge.—I agree that the Court ought not to hear these affidavits on the present occasion. I do not wish to be understood as saying any thing on the question whether Edwards is or is not a good relator. I come then merely to the consideration of the question upon the statute. Sir W. Follett's

argument was, that the statute was so worded, that the defect on which the defendant's right to hold his office was questioned has been unconditionally and absolutely cured, and that the defendant may take advantage of the statute in this respect, and at the same time decline troubling himself with taking any step to put an end to the proceedings, and yet that the other party would have no right to go on. I think that that would be a monstrous conclusion to draw from the statute. I do not think that any such conclusion can be drawn, but that all the saving of defects is subject to the condition of the payment of costs, and that the party seeking the benefit of the statute must himself take steps for that purpose. We must give a reasonable construction to the statute, and any person who seeks to obtain for himself relief under its provisions, ought to come in and satisfy the conditions on which that relief may be afforded him. In this particular case but few costs have been incurred; but that may not always be so; and a party who is prosecuting a legal right, if stopped by a statute from further proceedings, is at least entitled to receive the costs he has incurred. Suppose the party had gone to trial upon this *quo warranto*, would it be tolerated that the defendant, on the passing of the statute, should say, "You cannot now go any further; but I shall make no application for relief, because I should then have to pay costs." I think that the defendant cannot avail himself of the relief given by this statute, except upon the condition of paying the costs incurred up to the time when the defect in his title was cured by the statute; and that he cannot now turn round on the prosecutor and say that the rule must be discharged, but that he shall pay no costs.

Rule absolute.—*The Queen v. Jones*. M. T. 1837. Q. B. F. J.

Queen's Bench Practice Court.

LEASE.

What are sufficient words to constitute a lease.

This was a rule to shew cause why a verdict for the plaintiff (for 16l. 4s. 9d.) obtained on the trial before the undersheriff of Stafford, should not be set aside, and a new trial granted. At the trial, the defendant put in evidence, to prove a set off of rent, an instrument in this form:—An agreement made between Ralph Harding, of &c., and Thomas Carr, of &c., does agree with R. Harding to pay the yearly rent of 20l. a year, for a house known by the name and sign of the Cock, situate at &c., and for one acre of land adjoining, the rent to be paid half-yearly, namely, the 25th March, and September the 29th; that is to say, Lady-day and Michaelmas, and six months notice to be given on either side, or to forfeit half a year's rent, and to leave the house in as good repair as the said Thomas Carr finds it on his first entering on the same,

and to pay all rates and taxes whatsoever may be incurred on the property, during the time the said Thomas Carr is tenant; and that the said Thomas Carr does not sell nor take away any manure of the premises, but lay it on the land; and if he leaves at a *unproper* time, he must allow for taking of the crops."

This instrument was signed by both plaintiff and defendant, was undated, and stamped with an agreement stamp. It was objected at the trial that it was a present demise, and required a lease stamp; and the undersheriff thought the objection good, and rejected the evidence. A verdict was found for the plaintiff for 16l. 4s. 9d.; and a rule *nisi* for a new trial was obtained, on the ground of the rejection of this evidence.

R. V. Richards shewed cause.—The case of *Poole v. Bently*,^a and a number of other cases only decide that in questions like the present, every case stands on its own particular circumstances, and that the intention of the parties is to be ascertained. In this case, the insertion of a very few words would have made this instrument a present demise; and it is clear from it that the intention of the parties was so to consider it. The clause requiring notice to be given on either side, is alone sufficient to shew that intention. The case of *Dunk v. Hunter*,^b where an instrument of this doubtful nature was held not to be a present demise, the instrument contained no amount of the rent which was to be paid. It is impossible to say that no interest passes under this instrument.

Wightman, contra.—There are clearly no words of present demise in this instrument. It is an agreement which is all on the part of Carr, with the single exception of the stipulation about the notice. If it is held to be a demise, then no instrument can ever be held to be an agreement merely.

Cur. adv. vult.

Coleridge, J., the next day (June 10th,) gave judgment.—This was a question arising on the rejection of evidence on a set-off; and the question was, whether an instrument was properly stamped. It was rather an extraordinary instrument, in the following form:—(The learned Judge here recited it.) I confess I do not much question whether this is an agreement or a lease; if it is anything at all, it seems to me to be a lease. There are a great number of reported cases on this subject, and many of them run very near to each other, which was only to be expected, as whenever the Court has to decide a question of this kind, it has to act at the same time as judge and jury in the case. But this principle is uniformly to be met with in all the cases, namely, that the object of the Court is to ascertain what was the intent of the parties. If they contemplated the enjoyment of a present interest, then it was considered a lease; but if they contemplated that at some future time the interest should begin, then it has been considered merely an agreement for a lease. Now

^a 12 East, 168; 2 Campb. 286.

^b 5B. Arn. & Ald. 322.

If in this instrument the words "R. Harding agrees to let, and T. Carr agrees to take the house," had been added, it would make it clearly a lease. If there was that single addition, no question it would be a lease; and the absence of that will not make it an agreement, the intent of the parties being clearly the same. I think therefore it was not properly stamped as an agreement. Then it is a question whether it is a lease, but then there are not words of present demise therein; however, I have shewn the instrument to my learned brothers, and we all agree in thinking that it must be taken as a lease. Are there words to divest Harding of his possession? It is true there are not the exact words themselves; but he undertakes not to turn Carr out without giving six months notice, or forfeiting half a year's rent. I think, therefore, it sufficiently appears that he intended to divest himself of the possession, and that then the consequence follows that it was a lease. On the whole, I think the instrument was improperly stamped, and therefore the rule must be discharged, as the undersheriff was right in rejecting the evidence.

Rule discharged.—*Curr v. Harding*, M. T. 1837.—Q. B. P. C.

Common Pleas.

RULE TO COMPUTE ON A BANKER'S CHECK.

The Court will grant a rule nisi to compute principal and interest on a banker's check.

Petersdorff moved for a rule to compute principal and interest on a banker's check for 1000*l*.

Tindal, C. J.—I never saw a check drawn with interest.

Rule refused.

On a subsequent day, *Petersdorff* again applied, and said that he had made inquiries in the other Courts, and found that it was usual to grant such rules.

The Court, under these circumstances, granted a rule *nisi*.

Rule *nisi* granted.—*Anonymous*, M. T. 1837. C. P.

BAIL.—NOTICE.—DESCRIPTION.

It is necessary in the Court of Common Pleas to state the description of the bail in the notice of justification, although the bail referred to are not added bail, but the same as those of which notice had already been given.

In this case, the bail, of which, notice had already been given, were the same as those referred to in the notice of justification; but in the latter notice, no description of the bail was given, although the description was contained in the affidavit of sufficiency, as well as the original notice.

Dowling opposed the bail, and contended that the notice of justification was insufficient in this Court, notwithstanding the reference of it to the bail already put in. He cited the

rule of Court to that effect, which was to be found in 4 Bingham.

Knowles, in support of the bail, submitted that the objection, although founded, it could only affect the costs.

Coleman, J. (sitting alone), rejected the bail to justify, and gave the defendant six days for fresh bail, on payment of costs.

Bail rejected.—*Granville's bail*. M. T. 1837. C. P.

Eschequer of Pleas.

BILL OF EXCHANGE.—FRIVOLOUS DEMURRER.

Where, in an action on a bill of exchange, there are two counts, in the latter of which it is alleged that the defendant promised to pay the last mentioned several monies, the promise applies to the monies alluded to in the first count, and a special demurrer assigning for cause that no promise to pay the bill is alleged, will be set aside by rule as frivolous.

This was an action of assumpsit, brought by the indorsee against the drawer of a bill of exchange. There were two counts in the declaration, in the first of which was alleged the making of the bill, the indorsement to the plaintiff, and the nonpayment of the bill by the acceptor on its being presented, of which the defendant had notice; and the second count stated that "the defendant, in consideration of the premises, then promised to pay the last mentioned several sums on request, yet that he had disregarded the promise, and had not paid the same or any part thereof." The defendant specially demurred to the first count, assigning for cause that there was no allegation of promise to pay the bill in the declaration.

R. V. Richards had obtained a rule to set aside the demurrer as frivolous, against which,

Wightman now shewed cause. He submitted that when a fair point for argument was raised by a demurrer, it could not be considered frivolous. In the case of *Henry v. Burbidge*, 5 D. P. C. 484, it was held that where in an action by the indorsee against the acceptor of a bill, the declaration omitted to allege a promise to pay, it was bad on special demurrer. There the promise alleged was similar to that in the present case, and the only difference between the cases was that, in that which was cited there was a count for goods sold. It was contended further, that the mode which had been adopted in the present case of taking the opinion of the Court upon a demurrer, was one which would be likely to be attended by the greatest possible inconvenience.

Parke, B., said, that if the last ground existed for fair argument, the defendant should have the full benefit of it, but the declaration containing only one sum besides the amount of the bill, the promise in terms applied to both counts.

Rule absolute.—*Chevers v. Parkington*, M. T. 1837. Exchq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a select Committee.]

To extend the time limited by the 1 Vic., c. 30, for abolishing certain Offices in the superior Courts of Common Law, and to make provision for a more effective and uniform establishment of Offices in these Courts, and for establishing and ordaining Tables of Fees proper to be demanded and taken in these Courts. *Ld. Abinger.*

[This bill stands for second reading, but has not yet been printed, and it is expected that the arrangements will be completed before January, so as to render the postponement of the Act unnecessary.]

For regulating Charities. *Ld. Brougham.*
[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to children of tender age. *Mr. Serjt. Talfourd.*

To amend the Law of Copyright.

Mr. Serjeant Talfourd.

[Leave has been given to introduce both these Bills.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. *Mr. Mackinnon.*

To facilitate the recovery of possession of Tenements, after due determination of the Tenancy. *Mr. Aglionby.*

[This bill is now in Committee.]

To enable Recorders of certain Boroughs to hold a Court for the recovery of Small Debts. 14th Feb. *Colonel Seale.*

To make better Provision for collecting and distributing the Estates of persons found Bankrupt under Commissions and Fiats directed to *Country Commissioners.*

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the borough of Finsbury.

Mr. Wakley.

To remove doubts as to summoning Juries at Adjourned Quarter Sessions.

[This Bill is in Committee.]

LAW OF PROPERTY.

To improve the tenure of Copyhold and Customary Lands. *Att. Gen.*

To alter and amend the Law relating to the Mortgages of ships and vessels.

Mr. G. F. Young.

To enable Tenants for Life of Estates in Ireland to make improvements in their Estates, and to charge the inheritance with a portion of the monies expended in such improvements. *Mr. Lynch.*

To enable Tenants for Life, and Mortgagees in possession of Lands in Ireland to grant Leases, and to enable Tenants for Life of Lands in Ireland to make exchange, and for giving a summary partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous Bill stand for second reading on the 21st Feb.]

To enable married women, with the consent of their husbands, to pass their interests in Chattels Personal. *Mr. Lynch.*

To amend the 13 G. 3, for the better cultivation, improvement, and regulation of the Common Arable fields, Wastes and Commons of Pasture in this kingdom.

Lord Worsley.

[This Bill stands for second reading.]

To amend the 6 & 7 W. 4, for facilitating the inclosure of open and arable fields in England and Wales. *Lord Worsley,*

To render the owners of small tenements liable to the payment of the rates assessed thereon.

[This bill stands for second reading on February 7th.]

CRIMINAL LAW.

To authorize the summary conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. *Sir E. Wilmot.*

To authorize Recorders of Boroughs, and Chairmen of Quarter Sessions, to reserve points of Law in Criminal Cases, for the opinions of the Judges. 12th Feb.

Sir E. Wilmot.

That certain offences to which the punishment of Death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. *Sir E. Wilmot.*

To amend the Law of Libel.

Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as

authorizes Magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime.

Mr. Barneby.

[The third reading of this Bill is fixed for the 9th Feb.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intitled "An Act to amend the Representation of the People of England and Wales." 8 Feb. Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the Law for the trial of Controverted Elections, or returns of Members to serve in Parliament. Mr. Buller.

[This Bill has been brought in, and is now in Committee.]

To regulate the times of payment of rates and taxes by Parliamentary Electors, and to abolish the Stamp Duty on the admission of Freeman. Id. J. Russell.

[This Bill is in Committee.]

To define and regulate the lawful expenses at elections of Members to serve in Parliament. Mr. Hume.

To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Perceval.

To amend the Laws relating to the Qualification of Members to serve in Parliament. Mr. Warburton.

MUNICIPAL OFFICERS.

For the relief of persons elected to municipal offices, and entertaining conscientious objections to subscribe the declaration required by the latter part of the 50th section of the Municipal Corporation Act.

[This bill stands for third reading.]

HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

MISCELLANEA.

LAWYERS IN PARLIAMENT.

Mr. Hallam, in his work on the "Middle Ages," (vol. 3, p. 176), says, "the number of practising lawyers who sat in parliament, of which there are several complaints, seems to afford an inference that it had begun in the reign of Edward III. Besides several petitions of the commons, that none but knights or re-

putable 'squires should be returned for shires, an ordinance was made in the 46th of his reign, that no lawyer practising in the king's court, nor sheriff during his shrievalty, be returned knight for a county; because these lawyers put forward many petitions in the name of the commons, which only concerned their clients. This probably was truly alleged, as we may guess from the vast number of proposals for changing the course of legal process, which fill the rolls during this reign. It is not to be doubted, however, that many practising lawyers were men of landed estate in their respective counties."

It seems hardly a fair inference against the legal men of that period, that they introduced objectionable measures relating to the law; it would rather shew that the members of the profession then in parliament, turned their attention to subjects with which they were most familiar, and with the mischief of which they had the best practical experience.

THE EDITOR'S LETTER BOX.

A Correspondent, who is laudably desirous that every thing tending to the honor of the members of the profession, in all its branches, should be duly noticed, calls the attention of our readers to the munificent donation of 1000*l.* to the London University College, made (through the medium of Mr. Tooke, the Treasurer) by Mr. Brundrett, the eminent solicitor. It appears that Mr. Brundrett also subscribed 500*l.* towards founding the Law Institution. These splendid gifts are better bestowed in the lifetime of the donor, than when he has no further need of his well-earned wealth. Although there may be many who are inclined to follow this admirable example, we fear there are few who are able to do so.

We recommend a Young Correspondent, who asks advice on the best course of reading with a view to examination, to consult the Manual for Articled Clerks, in which he will find a short course pointed out, which seems adapted to his case.

There appears to be a mistake in supposing that a second examination took place of any of the candidates during the last Term. A list of those who passed will be given in the Supplement of the month.

The important Report on the proposed alteration of the Law of Partnership, has been printed as an Appendix to the present volume, and Subscribers who wish to receive it will please to give early directions, as only a small number comparatively has been printed.

We are informed by a Correspondent, that at the Law Students' Society, *juris prudentia*, as well as legal questions, are discussed; from which we understand that the members are not restricted to the technicalities of the law. We understand, however, from satisfactory authority, that it is not intended to be a general debating Society, but rather in aid of legal studies and attainments.

The Legal Observer.

SATURDAY, DECEMBER 30, 1837.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PROGRESS OF LAW REFORM.

PARLIAMENT having adjourned for a brief season, it may be well to take this opportunity of alluding to the general state of the law business before it; and we can assure our readers that it needs considerable vigilance, and constant attention to keep in view all the measures which are proposed connected with the subject. We shall now mention the most prominent of these, and consider the probability they have of passing into law.

We conceive that there is little doubt that after the recess, Government will bring forward a bill for the establishment of some kind of local Courts. In answer to a question from Captain Pechell, the Attorney General said that the subject of an alteration of the Sheriff's Court was now before the Lord Chancellor and the Judges, and that if that noble and learned Lord should not bring forward a bill for the purpose, he (the Attorney General) would support Captain Pechell's bill; and on one of the last days of the late sitting, Lord John Russell moved for a return of all writs of trial which have been issued under the Law Amendment Act (3 & 4 W. 4, c. 42), to the Sheriffs of England and Wales, for the years 1834, 1835, 1836, and 1837, distinguishing those where the demand has been under 10*l.* and 20*l.* This return should certainly be the foundation of any measure on this subject. We must first see how the existing scheme for the recovery of small debts has worked, before we can properly legislate for a new plan. Another incident to be taken into consideration with reference to this subject, is the frequent and often successful applications which have been lately made to the Legislature both

for public and private bills, for the establishment of Courts for the recovery of small debts at particular places. Many acts of this nature have passed in the late Sessions, and several similar bills have already been brought in. All these circumstances induce us to think that the time has now arrived when some general measure for the recovery of small debts would be expedient. We also call attention to a bill, notice of which has been given, to enable Recorders in certain boroughs to hold a Court for the recovery of small debts.

Another important bill is Serjeant Talfourd's bill, relating to the law of Copy-right; which has been brought in and read a first time. As it now stands, it relates to books alone; and the learned Serjeant intends to bring in a separate bill relating to engravings. In the short discussion which took place, when it was brought in, Sir Robert Peel threw out a suggestion that the whole subject should be referred to a Select Committee. We think, that, at any rate this course might be adopted with advantage with respect to the second bill. Another bill, brought in by the same learned gentleman, relating to the Custody of Infants, is intended to give the mother access to her children, when separated from her husband, under the direction of a Judge. We think, however, that this latter bill deserves consideration.

The bill for Abolishing Imprisonment for Debt is now before a Committee of the House of Lords, and we conceive that it will come down to the House of Commons in a modified shape. The opinion gains ground that arrest on mesne process should be abolished, but we do not believe that a more extensive bill will pass in the present session.

The Bills relating to the Qualifications

of Members of Parliament, the Rights of Married Women, Controverted Elections, Common Fields Improvement, Custody of Insane Persons, the County Rates Bill, the Irish Bills, giving Tenants for Life power to lease, exchange, effect partition, and improve their land, are also of more or less importance, and well deserve the attention of the Profession.

THE LAW OF PARTNERSHIP.*

MR. BELLENDEN KER has made a Report on the Law of Partnership, under the direction of the President of the Board of Trade. We have printed this Report in an Appendix, and we direct the attention of our readers to it. There are few subjects of such general interest as this branch of the law, of which the Report contains a summary. It more especially relates to the difficulties which exist in suing and being sued where partners are numerous, and considers whether it would be expedient to introduce a law authorising persons to become partners in trade with a limited responsibility, similar to the French law *En Commandité*.

THE HILARY CLUB.

I AM informed that some consternation has prevailed during the last week among the Rulers of the Inns of Court, at the communication which I made respecting the intended entertainment to her Majesty, and I have received several letters on the subject. I can only say that if I have fallen into any errors in my account, I shall be most happy to correct them. I am informed that the Middle Temple never proposed that there should be a mere breakfast. This Society considered that there should be a collation, or *dejeuné à la fourchette*, on the ground that this entertainment would best accord with modern habits, and not from any desire to economise or lessen the splendour of the entertainment. I am further told that it was doubtful, up to a very late period, whether the Ladies of the Bedchamber should not pass through

* Appendix, containing Mr. H. Bellenden Ker's Report of the Law of Partnership, and Heads of a Bill to amend the Law of Partnership.

a legal examination, before the degree of Barrister at Law was conferred on them, and that a series of questions was actually prepared on those subjects, which it was thought would be most likely to interest them, and to elicit information from them. Some of these were as follows:—

What is a fee? Describe its incidents and kinds?

What is a *feme sole*? How has she been affected in general by the late marriage act?

What is pin-money; state what is the average allowance?

What is meant by giving colour, and where do you buy your rouge?

What is meant by a *seisin in tail*?

Mention, if you can, some eminent lawyers who have lived and died bachelors?

But, after a mature deliberation, the idea of an examination was given up, and the degree will be conferred without it.

From this public entertainment I now pass to private parties, as to which I have received a letter from a gentleman, whom I have already introduced to my readers as familiarly known as Tom Coterie.

Temple, Dec. 27.

My dear Sir,

Seeing that you have resumed your account of our club, and understanding that you are open to receive communications on all minor matters, I wish to call your attention to the present state of dining among the legal profession.

At the present season of the year it falls to every one's lot, especially if living alone in chambers, to be asked to assist at a series of legal dinners. Now I do not particularly object to the dinners themselves, although really I wish they would vary them a little. I know just as well what I am to have as if I had written it out the night before. Cods head and shoulders is an excellent dish: I respect it much, but alas! to sit beside it every day! Then a boiled turkey is a valuable bird; but a succession of these creatures is decidedly intolerable. Then those four corner dishes,—I know so well what's in them before their covers are taken off. Those eternal cutlets! those everlasting rissoles; that interminable curry! I am not however complaining of this. But still it is very strange that they cannot vary those sort of things a little. I have got to be perfectly acquainted with the exact mould of the jelly! But still this is really not what I wished to write about. The point I wished to call to your notice for correction, if possible, is the state of the conversation. Before dinner, during

dinner, and after dinner, we have nothing but law.

“Law first, law last, law without end.”

It matters not who are present. Lawyers' wives, it is true, get a smattering of their husband's calling; but there are often young ladies, really nice girls, who are only probationary lawyer's wives, willing perhaps to become so; and I should certainly suppose that these sort of dinners will frighten them out of it. You tell us that law is now fashionable in the highest circles; but really in the quiet one in which I move at this season of the year, it is quite a nuisance. Pray do your best to stop it, and believe me,

Your's, ever,

T. COTERIE.

NEW BILLS IN PARLIAMENT.

TENANTS FOR LIFE.

This is a bill to enable tenants for life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements. Although relating to Ireland, it may be properly submitted to our readers, inasmuch as its provisions will probably lead to the investment of money by English capitalists.

It recites that it would lead to the improvement of property in Ireland, and be advantageous to the public, if tenants for life were empowered, under proper restrictions, to make permanent improvements in their estates, and to charge the inheritance thereof with the monies expended by them for that purpose; it is therefore proposed to be enacted,

1. That it shall be lawful for any tenant for life to apply by petition to her Majesty's Court of Chancery in Ireland, for leave to make any permanent improvements in the lands and hereditaments to which he shall be entitled, or any part thereof, either by draining, enclosing or planting the same, or otherwise rendering the same fit for cultivation; and in every such petition shall be specified the improvements proposed to be made and the estimated costs thereof; and every such petition shall be referred to a master of the said court, to inquire into and ascertain the propriety of such improvements being effected; and such master shall and he is hereby required to call for such plans and estimates and specifications in relation to the said proposed improvements as he shall think fit, and shall cause the same to be laid before the commissioners for the time being appointed for the extension and promotion of public works in Ireland, who shall and they are hereby required to report thereupon to the master; and after such report shall have been made to and considered by the master, he shall make his report respec-

ting such proposal; and the said court shall make such order upon the petition and report and as to the costs of the application as such Court shall think fit, and as shall be in conformity with the provisions of this act.

2. That for enabling the said commissioners of public works to make their report according to the provision hereinbefore contained, it shall be lawful for them, if they shall think fit, to employ a surveyor to inspect the lands and hereditaments proposed to be improved, and to advise upon the improvements proposed to be made; and all expences incidental to any such application to the said commissioners shall, in the first instance, be paid by the tenant for life who presented the petition, and who, if required by the said commissioners, shall pay the same in advance; but the same expences shall afterwards be defrayed in such manner or by such persons as the said Court shall direct.

3. That a copy of every such petition shall be served twenty-one days at the least before the hearing thereof upon the person entitled to the first vested estate of inheritance in remainder after the estate of the tenant for life and every intervening tenant for life and other person having an intervening partial estate in the lands and hereditaments so proposed to be improved; but if any of such persons shall be of unsound mind, or under the age of twenty-one years or under any other legal disability, or beyond the limits of the United Kingdom of Great Britain and Ireland, then a copy of such petition shall be served on his behalf upon such person as the said Court shall appoint for that purpose; and every person upon whom a copy of any such petition shall be so served, shall be at liberty to attend before the master to whom such petition shall be referred, and to consent or object to the proposal contained in such petition.

4. That in every case where it shall be proved to the satisfaction of the said court, that the proposed improvements are proper and judicious, and will be advantageous to the persons entitled in reversion or remainder, and the said Court shall order and direct that the proposed improvements may be made, it shall be lawful for the tenant for life who shall have presented such petition to make and execute such improvements accordingly.

5. That in every case where the said court shall, in pursuance of the provisions of this act, have made an order sanctioning the execution of any improvements of any lands or hereditaments, and such improvements shall have been made accordingly, it shall be lawful for such court, upon the petition of the tenant for life who shall have made such improvements to inquire into and ascertain the amount actually expended in such improvements, and upon proof thereof being made to the satisfaction of the said court and the said board of works, to order and direct that the tenant for life who shall have made such improvements shall be at liberty to charge the inheritance of the lands and hereditaments so improved, and of all or any other lands and hereditaments in Ireland

standing settled therewith to the same uses, intents and purposes, by virtue of limitations contained in the same instrument or the same set of instruments, with *three-fourth* parts of the amount of the monies so expended, and the expenses of and incidental to the application to the said Court, together with interest at any rate not exceeding *five-pounds* per centum per annum.

6. That the principal money to be so charged under or by virtue of the provision aforesaid shall in no case exceed the amount of three years' rent or clear yearly value of the lands and hereditaments so improved prior to the improvement thereof (to be ascertained by an average of the last nine years' rent or clear yearly value thereof); such rent or clear yearly value to be over and above all rates and taxes payable in respect of such lands and hereditaments.

7. That when any reference shall be made under the provisions of this act as to the propriety of any improvements being carried into effect, or as to such money having been properly laid out, the master to whom such reference shall be made shall inquire and report what was the yearly rent or clear yearly value of the lands and hereditaments improved or proposed to be improved during the last nine years which shall have elapsed before the date of his said report.

8. That when and so soon as or at any time after the said court shall have made any order under the provisions of this act, directing that any money which shall have been ascertained to have been expended in the permanent improvement of any lands or hereditaments may be charged on the inheritance of the same, and all or any other lands and hereditaments in Ireland, standing settled therewith to the same uses, intents and purposes, it shall be lawful for the tenant for life who shall have obtained such order, his executor or administrator, to convey the inheritance of the lands and hereditaments so chargeable to any person whomsoever by way of mortgage, for securing the repayment of such sum as shall be chargeable on the inheritance of the said lands and hereditaments, under the provisions of this act, with all such costs of the application to the said court as such court shall direct to be so charged, and interest for the same respectively at the rate aforesaid; and the receipt of such tenant for life, or his executor or administrator, shall be an effectual discharge to the person to whom such mortgage shall be made for the money advanced by him; and if the tenant for life shall advance such sum and costs, then he shall have a lien on the inheritance of the said lands and hereditaments for repayment thereof with interest from his decease at the rate of six pounds per centum per annum, and the same shall be payable within one year after such his decease.

9. That when and so soon as the money secured by any such charge or demise shall be fully paid and satisfied by or on behalf of any person who shall be entitled to the inheritance of and in the said lands and heredita-

ments, every such charge or demise shall be and become absolutely null and void.

10. That no person becoming entitled to the possession or receipt of rents of the said lands and hereditaments, after the determination of any preceding estate or interest therein, shall be liable to pay any further or larger arrear of interest than for twelve calendar months next preceding the time when the title to such possession or receipt of rents shall have commenced.

11. That the master by whom the average amount of rent or yearly value shall be ascertained as aforesaid, or his successor in office shall and he is hereby required to indorse a statement of the amount thereof on every indenture of charge or demise, and to sign the said indorsement and to set forth the date thereof; and every such statement shall be binding and conclusive.

12. That it shall be lawful for any tenant for life, hereby authorised to make such improvements as aforesaid, to apply to the commissioners appointed for carrying into execution the purposes of an act of Parliament passed in the first and second years of his late Majesty King William the Fourth, intituled, "An Act for extension and promotion of public works in Ireland," or any other act to be hereafter passed for the like purpose, for the loan of any sum of money for defraying the expences of any such improvements proposed to be or in course of being made under the authority of this act, at interest, after the rate and upon the terms mentioned in the said act, or any other act to be hereafter passed for the like purpose, for loans to individuals for the drainage or other improvement of lands; and the receipt of such tenant for life shall be an effectual discharge for the money lent by the said commissioners.

13. Definition of term "tenant for life" in this act.

14. Definition of other terms in this act.

15. Act not to enable a lessee to affect the interest of his landlord.

COMMON LAW FEES,

UNDER 1 VIC. c. 30.

A TABLE OF FEES, prepared pursuant to the Statute 1 Vic. c. 30, s. 6, by Commissioners appointed under the Statute 11 Geo. 4, and 1 Will. 4, c. 58, and allowed and sanctioned by the Judges of the Superior Courts of Common Law at Westminster, and established for the said Courts.

No fee whatever to be taken, not comprised in this table; and whenever, by any change in the practice, any duty shall

cease to be performed, the fee thereon also to cease.

I. Writ Fee.

For signing, sealing, and (where necessary) entering every writ, and for filing the same, and indorsing the day and hour when filed :

	£.	s.	d.
Writ of Capias	0	5	0
Alias writ of Capias	0	2	6
Pluries	0	2	6
Writ of Summons	0	5	0
Alias or Pluries	0	2	6
Writ of Distringas	0	5	0
Alias or Pluries	0	2	6
Writ of Detainer	0	5	0
Scire Facies	0	5	0
Habeas Corpus ad Testific.	0	5	0
Procedendo	0	5	0
Supersedeas (except when it is a prisoner's writ)	0	5	0
Prohibition	0	5	0
Consultation	0	5	0
Commission for Witnesses	0	5	0
Certiorari	0	5	0
Seisin	0	5	0
Possession	0	5	0
Venditioni Exponas	0	5	0
Pone	0	5	0
Distringas	0	5	0
Re. fa. lo.	0	5	0
Retorno Habendo	0	5	0
Exigent	0	5	0
Allocatur Exigent	0	5	0
Proclamations	0	5	0
Supersedeas to Exigent	0	5	0
Capias Utlagatum	0	5	0
Subpœna on Capias Utlagatum ..	0	5	0
Writ of False Judgment	0	5	0
Mandamus	0	5	0
All other writs not specified, except Execution writs and writs connected with the Jury Process	0	5	0
Inquiry of Damages	0	5	0
Writ of Trial	0	2	0
Attachment	0	1	0
Subpœna before the Judge.	0	2	0
Subpœna before the Sheriff	0	1	0
Restitution	0	1	0
Ven. Fa. Juratores { Included in the fee for signing Jury Process			
Distringas {			
Mittimus to a Coun- {			
ty Palatine {			
Hab. Corp. ad satis. { When Prisoners' writs, or			
----- cum causâ { sued out by defendant } <i>nil</i>			

For searching for all writs and præcipes each term, see "*Searches*" No. 10.

For Office Copy of Præcipe, see "*Office Copies*," No. 14.

2. Appearance Fee.

For every Appearance entered, £. s. d.

whether in the Appearance Book, or upon the Roll, on Capi Corpus 0 2 0

For every Appearance for other defendants after the first } *nil*

For every Certificate of an Appearance being entered, see "*Certificate*," No. 11.

3. Bail Fee.

For filing every Bail Piece 0 3 0

For every Allowance and Justification of Bail 0 3 0

Every Search for Special Bail Piece, see "*Searches*," No. 10.

Every Post-terminum on Special Bail Piece filed } *nil*

Office Copy of Special Bail Piece, see "*Office Copies*," No. 14.

To a Commissioner for taking Special Bail in the Country, in each Cause 0 2 0

4. Rule Fee.

Rule to Plead 0 1 0

Note.—No fee to be taken on any Rules to Declare, Reply, Rejoin, or Surrejoin, or any Common Rule relating to Pleading, or on Prisoners' Rules.

For other Common Rules 0 1 0

All other Rules, when taken out, whatever be their length, one fee on each of 0 4 0

5. Pleading Fee.

For the Pleadings when Issue is joined in fact or in Law, or both, one fee of 0 7 0

Note.—This fee is to be collected on signing the Writ of Trial, on passing the Record, or otherwise on the Taxing of Costs

6. Trial Fees.

	£.	s.	d.
For signing the Jury Process and passing and sealing the Record of Nisi Prius	0	7	0
For striking and reducing a Special Jury	1	1	0
For attending in any other Court, with Documents filed in the Office, the Officer's Expenses.			

7. Judgment Fee.

For entering an Interlocutory Judgment where no Pleading Fee of 7s. has been previously payable	0	5	0
For entering a Final Judgment... ..	0	7	0
For entering a Judgment of Non Pros.....	0	5	0
For a Certificate of a Judgment, see "Certificate," No. 11.			
For every satisfaction acknowledged upon Record	0	5	0
For entering an Audita Querela .	0	5	0
For entering a Certiorari out of Chancery to certify a Record .	0	5	0
For indorsing the Return on a Writ of Certiorari	0	3	0
For exemplifying a Record	0	5	0
For searches for Records in the Upper or Inner Treasury, see "Searches," No. 10.			
For Copies of Records, see "Copies," No. 14.			

8. Execution Fee.

For signing and sealing every Writ of Execution	0	1	0
For every Commitment in Execution, and making Marshal's or Warden's Lists	0	3	0

9. Error Fee.

For certifying a Record upon a Writ of Error, each Roll	0	10	0
For drawing and entering every Rule in Error	0	4	0
For entry of all Proceedings in } Writs of Error			nil

Note.—All entries of Proceedings in Writs of Error are to be prepared by the Attorneys.

For Office Copies of all Proceedings when required, see "Office Copies," No. 14.			
For examining the Transcript with the Roll with the Clerk of the House of Lords	1	1	0

10. Search Fee.

	£.	s.	d.
Every search other than for Appearances and Rules to Plead in the same Term ... per Term	0	0	3
except a single Term	0	0	6
Or a general search for Judgments where an Index is kept.....	0	2	6

11. Certificate Fee.

For every Certificate.....	0	1	0
For every certified Copy of an Entry in the Books	0	1	0

12. Affidavit Fee.

For every Affidavit sworn or affirmed in Court, or before a Commissioner, or in the Master's Office, exclusive of the Usher's fee, from each deponent	0	1	0
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13. Entry, Enrolment, Registration and Filing Fee.

For every Entry of an Attorney's Annual Certificate.....	0	1	0
For every Enrolment or Registration, each Deed or Instrument	0	3	0
For filing Bail Piece taken before a Commissioner in the Country	0	1	0
For filing each Affidavit, except Affidavits to hold to Bail and of Service of Process	0	1	0
For filing the Affidavit and enrolling the Articles previous to the Admission of an Attorney .	0	5	0
Re-admission	0	2	6
For filing Warrants of Attorney or Cognovits when filed under the statute 3 Geo. 4, c. 39 ...	0	1	0
Orders of Nisi Prius...	0	1	0
Judges' Orders	0	1	0
And for any other Instrument filed by order of the Court or a Judge, each	0	1	0

14. Copy, Transcript, or Extract Fee.

All Office Copies, per folio	0	0	6
Every other Copy, Transcript or Extract, per folio	0	0	6

15. Taxation Fee, References and Interrogatories.

For taxing every Bill of Costs ..	0	1	0
If exceeding three folios, per folio	0	0	4

For every Report or Determination of the Master on special reference from the Court	£.	s.	d.
For every Examination viva voce, or on Interrogatories.....	1	1	0
For settling every Bond as Security for Costs	0	10	6
For Outlawry, see "Writs," "Searches," "Enrolments," "Copies."			

FEES OF UNDER USHERS AND CRIERS.

On taking, adding, or justifying Bail in Court, each usher ...	0	0	6
For every Oath or Affidavit sworn or Affirmation made in Court or before a Judge at Westminster, in term-time, each	0	0	1½
For every person appearing on recognizance, each	0	0	6
For Bail taken at Bar, Queen's Bench, each.....	0	1	0
For an Arraignment at Bar, Queen Bench, each	0	2	6
For every Fine in Court, Queen's Bench, each	0	0	6
For every Discharge in Court Queen's Bench, each	0	0	6
For exhibiting Articles of the Peace, each	0	0	6
For reversing an Outlawry in Civil Cases, each	0	1	0
For acknowledging a Deed in Court, each	0	0	3
For a person charged in execution in Court, or turned over on Habeas Corpus, each.....	0	0	1½
For a Trial at Bar, each.....	0	10	0
Calling and swearing Jury on ditto, each.....	0	1	6
Swearing every Witness on ditto each	0	0	1½
Attending a Jury on ditto, where they withdraw to consider their verdict, each	0	1	0
Commission sworn in Court, each	0	1	0
Estatut delivered on oath in Court, each	0	1	0
Recognizance taken in Court (except of Bail) each.....	0	2	0
On the signing of every final Judgment for, each	0	0	3
For receiving and returning a record called in Court, for the officer or officers producing the same, each record.....	0	1	0
For Attendance during Argument of any Case in the Crown or			

Special Paper, or in the Court of Error—one fee for all the	£.	s.	d.
Ushers	0	4	0

COURT KEEPERS' FEES,

Exchequer and Common Pleas.

On the taking, adding, or justifying of Bail in Court	0	0	4
Every Guardian admitted in Court	0	0	4
Every Trial at Bar.....	0	10	0

TIPSTAFFS' FEES.

Commitments on Habeas Corpus at Chambers, one fee of.....	0	10	6
Renderers in discharge of Bail.....	0	10	6
— in every Action after the first	0	6	0
Commitments in execution by the Court	0	10	6
Habeas Corpus to Courts of Queen's Bench, Common Pleas, or Exchequer	0	10	6
Habeas Corpus to take Witnesses into Court, to give evidence or for trial, per day	0	10	6
Habeas Corpus to Chambers to render in other actions	0	10	6
Bankrupts taken before the Commissioners	0	10	6
Insolvent Debtors to be heard upon their petition	0	3	0
Journies with Bankrupts or Insolvents, besides expences of Coach Hire, or Conveyance to Principal, per day	1	1	0
And to Assistant, if taken	0	10	6
Prisoners taken into Court by Rule of Court under the Lords' Act	0	10	6
Trial at Bar (each Tipstaff), per day	0	10	6

(Signed)

DENMAN. J. B. BOSANQUET.
 N. C. TINDAL. E. H. ALDERSON.
 ABINGER. J. PATTESON.
 J. A. PARK. J. GURNEY.
 J. LITTLEDALE. J. WILLIAMS.
 J. VAUGHAN. J. T. COLBRIDGE.
 J. PARKER. T. COLTMAN.
 W. BOLLAND.

Received by me and ordered to be enrolled, this twentieth day of December, 1837.

(Signed) THOS. LE BLANC,
 Master.

JUDGES' CLERKS.

*Whether the Clerks of Chief or Puisne Judges.*1. *Summons and Order Fees.*

	£.	s.	d.
Summons; each Cause, in Term	0	1	0
Summons; each Cause, in Vacation	0	2	0
Summons and Order to try an Issue before the Sheriff	0	1	0
Order for Writ of Distringas	0	3	0
Order to hold to Bail, upon Affidavit before suing out a Writ	0	3	0
Order for Allowance of Bail	0	3	0
Order to enter up Judgment on an old Warrant of Attorney	0	4	0
Order to enter Satisfaction upon ditto	0	3	0
Order to deliver Documents off the File	0	4	0
Order to sue in Formâ Pauperis	nil		
Order for Admission to sue or defend by Guardian	0	3	4
Order to charge a Person in Custody for criminal matter, with an Action	0	3	0
Order to change the Venue	0	3	0
Order for amending Record	0	3	0
Order for a special Jury	0	3	0
Order of Reference to Arbitration from each Party applying for the Order	0	4	0
Order to compel the attendance of Witnesses before an Arbitrator	0	3	0
Order to remand a prisoner	0	3	0
Order to remand or discharge a Seaman	0	3	0
Order to docket Judgment Roll	0	3	0
Order to file a Certificate of an acknowledgement of a Deed	0	3	0
Order undertaking to pay debt or costs, or to pay Attorney's Bill on taxation	0	3	0
Order to enter Appearance	0	3	0
Order to render in discharge of Bail	0	3	0
Order to exonerate Bail	0	3	0
Order for Judgment on Writ of Scire Facias	0	3	0
Order to make a Rule of Court absolute	0	3	0
Order other than above mentioned	0	2	0
Special Commission to take acknowledgement of a married Woman	0	5	0
Fiat for Admission of Attorney	0	10	6
Recognizance to appear and plead	0	10	6
Fiat for the Enrolment of a Deed	0	2	6
Fiat for Commissions of Sewers	0	10	6

Fiat for a Certiorari on the Crown side	£.	s.	d.
	0	2	0
Fiat for Habeas Corpus on the Crown side	0	2	0
Fiat for Habeas Corpus ad testificandum	0	2	0
Bond from a Merchant (being a Member of Parliament) and his sureties under the statute	0	10	6

2. *Bail Fees.*

Bails on Cepi Corpus in Term or Vacation, out of which, 6d. to the Porter of Serjeant's Inn	0	2	6
Bails on Habeas Corpus in a civil suit, in Term or Vacation, (out of which 6d. to the Porter)	0	2	6
Justifying Bail in Term or Vacation	0	2	0
Delivering Bail Pieces off the file to attorney, for him to take to Westminster	0	1	0
Delivering Bail Pieces off the file which have been filed above a year	0	1	0
Bail on Certiorari, in Term or Vacation, (out of which 6d. to the Porter)	0	2	6
Bail in Error	0	2	0
Surrender in discharge of Bail, and Commitment thereon, (out of which 1s. to the Porter)	0	7	6
Commitments to the custody of the Marshal or Warden, (out of which 6d. to the Porter)	0	3	6
Added Bail	0	2	0
Approbation of Commissioners for taking Special Bail	0	2	6
Approbation of Commissioners for taking Affidavits	0	2	6
Commission for taking Special Bail, (including Parchment, Ingrossing, or Printing and Sealing) Chief Judges Clerk's Fee	1	1	6
Commission for taking Affidavits, (including Parchment, Ingrossing, or Printing and Sealing) Chief Judge's Clerks fee	1	1	6

3. *Attendance and Service Fees.*

Attendance as Commissioners to take Affidavits	0	6	8
Attending to take Interrogatories, per diem	1	1	0
Attendance at trial at Bar, per diem	1	1	0
Attendances at the Judges' House or elsewhere than at Chambers, at the request of a party	0	6	8

£. s. d.			SHERIFFS' FEES, UNDER 1 VICT. c. 55.	
Entry of Caveat	0	2	6	
Special Case for the Opinion of the Court	0	2	6	
Special Case from Chancery	0	5	0	
Special Verdict	0	2	6	
Demurrer and other Paper Books	0	2	0	
Exhibit to which Judges' Sig- nature is required	0	1	0	
Deed acknowledged	0	1	0	
Deed acknowledged by Married Women	0	7	6	
Second acknowledgment by ditto	0	3	6	
Certificate on Nisi Prius Record	0	2	6	
Certificate of Bail not being put in	0	2	6	
Copying Judge's Notes	0	10	6	
Producing Judge's Notes	0	2	6	
Escape Warrant	0	5	0	
Warrant to apprehend a Bank- rupt	0	10	6	
Attendance by Counsel, each side	0	5	0	
Signing a Bill of Exceptions ...	0	5	0	
Signing Depositions	0	2	0	
Certificate on Special Case to the Courts of Equity	0	10	6	
4. Office Copies.				
Office Copies of Interrogatories, per folio	0	0	6	
do. of Depositions, do.	0	0	6	
do. of Affidavits, if re- quired, per folio	0	0	6	
5. Affidavits.				
For taking Affidavits or Affirma- tions from each Deponent, in- cluding all Exhibits annexed, in Term	0	1	0	
in Vacation	0	2	0	
For keeping Affidavits and carry- them to the Rule Office to be filed, each	0	1	0	
Fiat for allowance of a Writ of Error to the Exchequer Cham- ber	0	6	2	
Do. do. to Parliament	0	12	4	
(Signed)				
DENMAN.	J. B. BOSANQUET.			
N. C. TINDAL.	E. H. ALDERSON.			
ABINGER.	J. PATTESON.			
J. A. PARK.	J. GURNEY.			
J. LITLEDALE.	J. WILLIAMS.			
J. VAUGHAN.	J. T. COLERIDGE.			
J. PARKE.	T. COLTMAN.			
W. BOLLAND.				
Received by me and ordered to be en- rolled, this twentieth day of December, 1837.				
(Signed)	THOS. LE BLANC,			
	Master.			
A Table of Fees to be taken by Sheriffs, Under- sheriffs, Deputy Sheriffs, Sheriff's Agents, Bailiffs and others, the Officers or Ministers of Sheriffs in England and Wales, pursuant to the statute passed in the first year of the reign of Queen Victoria, cap. 55.				
For every Warrant which shall be £ s. d.				
granted by the Sheriff to his officer				
upon any Writ or Process, in Lon-				
don and Middlesex				
And on Crown and Outlawry Process,				
an additional				
In all other counties, where the most				
distant part of the county shall not				
exceed 100 miles from London ..				
Not exceeding 200 miles ..				
Exceeding 200 miles ..				
For an arrest in London ..				
In Middlesex, not exceeding a mile				
from the General Post Office ..				
Not exceeding 7 miles from the same				
place ..				
In other Counties, not exceeding a				
mile from the officer's residence ..				
Not exceeding 7 miles ..				
Exceeding 7 miles ..				
For conveying the defendant to gaol				
from the place of arrest, per mile				
For an undertaking to give a Bail				
Bond ..				
For a Bail Bond:				
If the debt shall not exceed £50 ..				
" " 100 ..				
" " 150 ..				
" " 300 ..				
" " 400 ..				
" " 500 ..				
If it shall exceed 500 ..				
For receiving money under the sta- tute, upon deposit, for Arrest, and paying the same into Court, if in				
London or Middlesex ..				
If in any other county ..				
For filing the Bail Bond:				
If the arrest be made in London or				
Middlesex ..				
If in any other county ..				
Assignment of Bail or other Bond:				
If in London or Middlesex ..				
If in any other county ..				
For the return to any Writ of Hab.				
Corpus, if one Action ..				
And for each action after the first ..				
For the Bailiff to conduct Prisoner				
to Gaol, per diem ..				
And travelling expences, per mile ..				
For searching offices for Detainers ..				
Bailiffs' messenger for that purpose ..				
To the bailiffs for executing Warrants				
on Extent, Capias ut lagatum,				
Levari facias, Fi. fa., Ca. sa., Ne				
Exeat, Attachment, Elegit, Writ of				
Possession, forfeited Recognizance,				

Process from Pipe Office, and other like matters, for each, (if the distance from the Sheriff's Office or the Bailiff's residence do not exceed five miles)	£.	s.	d.	For a Summons for the attendance of a witness	£.	s.	d.
.. .. .	1	1	0	0	5	0
If beyond that distance, per mile	0	0	6	In Replevin.			
On Distringas, in London	0	5	0	Bond upon the same scale as the Bail Bond.			
In Middlesex, not exceeding five miles from General Post Office	0	5	0	Precept to Bailiff	0	2	6
Exceeding five miles	0	10	0	Notice for service on defendant	0	2	6
In other counties, not exceeding five miles from officer's residence	0	5	0	Broker, where the sum demanded and due shall exceed 20 <i>l.</i> and shall not exceed 50 <i>l.</i> , for appraisement and affidavit of value	0	10	6
Exceeding five miles	0	10	0	Where it shall exceed 50 <i>l.</i>	1	1	0
For each man left in possession, when absolutely necessary:				And his travelling expences from his residence to the place where the goods are, per mile	0	0	6
If boarded, per diem	0	3	6	Bailiff for summoning parties, and delivering goods to tenant	1	1	0
If not boarded, per diem	0	5	0	And his travelling expences same as broker.			
For every Sale by Auction, notwithstanding the defendant should become bankrupt or insolvent, where the property sold, does not produce more than 300 <i>l.</i> , 5 <i>l.</i> per cent; 400 <i>l.</i> , 4 <i>l.</i> per cent; 500 <i>l.</i> , 3 <i>l.</i> per cent; and where it exceeds 500 <i>l.</i> , 2½ per cent.				For the Warrant, Record, and return of a Re. fa. lo., Accedas ad curiam, Pone, or writ of false Judgment	0	16	6
For the certificate of Sale to save Auction Duty	0	2	6	For writ of Retorno Habendo	0	4	6
Bond of Indemnity, besides stamps and stationery	1	10	0	For each summons on a writ of Sci. fa., or for the service of writ of Capias where no arrest	0	5	0
Certificate of Execution having issued for record	0	5	0	And mileage, per mile	0	1	0
On Writs of Trial and Inquiry:				For recording each demand or proclamation under writs of Outlawry	0	2	0
For a Deputation	1	1	0	For Bailiff, for making each demand or proclamation on writs of Outlawry, in London and Middlesex	0	2	6
On lodging writ for entering cause, warrant for summoning Jury, which fee shall be forfeited in case of countermand of trial	0	4	0	In other counties	0	5	0
On Trial or Inquisition:				And travelling expences, if the distance shall exceed five miles, then for every mile beyond that distance	0	0	6
Sheriff for presiding	1	1	0	For any Supersedeas, writ of Error, Order, Liberati, or Discharge to any Writ or Process, or for the Release of any Defendant in custody (unless in the prison of the county), or of any goods taken in execution	0	4	6
Bailiff for summoning Jury and attendance in Court	0	4	0	For the return of any writ or process, and filing same, exclusive of the fee paid in filing	0	2	6
And if not held at the Office of the Undersheriff:				Jury Process.			
For hire of Room, if actually paid not exceeding	0	10	0	For return to Common Venire	0	3	6
For travelling expences of Undersheriff from his office to place where Trial or Inquisition held, per mile	0	1	0	The like to Special	0	5	0
To the Bailiff from his residence, per mile	0	0	6	The like on Distringas or Habeas Corpus for Common Jury	0	12	0
In all cases in which it shall appear to the Master that a saving of expence has accrued to the parties by reason of a writ of trial having been executed by deputation, the fee for such deputation shall be allowed.				The like for Special Jury	0	14	0
On Writs of Extent, Elegit, Capias Utlegatum, and others of the like nature:				The like, with a view	1	0	0
For summoning the Jury, use of room, presiding at the Inquisition, &c.	2	2	0	The like to a Traverse Venire	0	14	6
Jury	0	12	0	For attendance, naming Special Jury	2	2	0
For travelling expences of undersheriff from his office to place of Inquisition, per mile	0	1	0	Twenty-four Warrants to summon Special Jury	1	4	0
For drawing and engrossing the Inquisition, per folio	0	1	6	For Bailiff, for summoning each Special Juror	0	2	0
				Sheriff attending in Court	1	1	0
				For attending a View, the fees as allowed by Rule of Court, Trinity Term, 7 Geo. 4, 1826.			
				For any duty not herein provided for, such sum as one of the Masters of			

the Courts of Queen's Bench or Exchequer, or one of the Prothonotaries of the Court of Common Pleas may, upon special application, allow.

DENMAN.	J. B. BOSANQUET.
N. C. TINDAL.	E. H. ALDERSON.
ABINGER.	J. PATTESON.
J. A. PARK.	J. GURNEY.
J. LITLEDALE.	J. WILLIAMS.
J. VAUGHAN.	J. T. COLERIDGE.
J. PARKE.	T. COLTMAN.
W. BOLLAND.	

*. By the 1 Vict. cap. 55, it is enacted, that any sheriff, officer, or minister, acting in the execution of process, who shall extort, demand, take, accept, or receive any fee, gratuity, or reward, not allowed, or greater in amount than allowed, upon complaint made to any of the Courts, on proof by affidavit or examination *videlicet* voce, or interrogatories, such sheriff, officer, or minister, shall be adjudged guilty of a contempt of Court, and punished accordingly. And any person, not being such officer or minister, and assuming or pretending to act as such, and receiving any fee, gratuity, or reward, shall be dealt with by the Court in like manner. And the Court may award costs on such complaints; but no complaint can be entertained unless made before the last day of the term next following the act whereof complaint is made.

SELECTIONS FROM CORRESPONDENCE.

USURY ON BILLS OF EXCHANGE.

To the Editor of the Legal Observer.

SIR,
I beg to call your attention to the Act 1 Vict. c. 80, "to exempt certain Bills of Exchange and Promissory Notes from the operation of the Laws of Usury."

After the recital, it is enacted that no bill of exchange or promissory note, made payable at or within twelve months after the date thereof, &c., shall, by reason of any interest taken thereon, &c. be void; nor shall the liability of any party to any [q. such] bill of exchange or promissory note be affected.

It seems to me that the person who framed this bill omitted the word *such* after the word any, and that in consequence of such omission a doubt may arise whether a prosecution could be carried on with effect respecting any bill of exchange whatever on which more than the legal rate of interest has or shall be taken, or the liability of any party to pay the same be affected.

AMICUS.

SUPERIOR COURTS.

Vice Chancellor's Court.

INJUNCTION EX PARTE.

Where a plaintiff applies for an injunction ex parte, and it appears from the affidavits in support of the application that the acts complained of had, or might have been, known by him long before, but he does not state the cause of the delay in applying, the Court will not grant the injunction until the defendants have an opportunity of answering the matter of the affidavits.

This was an application by a member of the Norwich Insurance Company for an injunction against the acting directors and managers of the company. The plaintiff's bill had been filed only a day before the motion, and the defendants had just entered an appearance, and their counsel were instructed to oppose the motion for the injunction, but they had not time to answer the affidavits of the plaintiff.

Mr. Wigram and Mr. Dixon, for the motion, stated the facts of the case from the bill and affidavits.

The Vice Chancellor said, the charges made against the defendants were so severe that he would not grant an injunction against them upon the *ex parte* statement of the plaintiff, without giving the defendants an opportunity of answering by affidavit the charges made against them; especially as the acts of which the plaintiff complained must, or might have been known to him months ago; for the books of the company were accessible to him and to all the members at all times. Before the Court could restrain the managers or directors from their intended proceedings, it must have a larger statement of the affairs of the company than the plaintiff's affidavit disclosed. All that was now known to the Court was purely *ex parte*. As he had often expressed his determination never to grant an information *ex parte*, where delay had been allowed to take place,^a and where the affidavits were so worded as to withhold from the court a discovery of the time when the material facts complained of first came to the party's knowledge,^b he should order the motion to stand over, in order to afford the defendants time to meet by affidavits the grave charges made against them.

Lloyd v. Bignold and others, at Lincoln's Inn, Nov. 29, 1837.

^a See *Perry v. Clark*, p. 59, ante.

^b See *Payne v. The Bristol and Exeter Railway Company*, 14 Leg. Obs. 436.

Rolls.

SOLICITOR.—PRIVILEGED COMMUNICATION.

Held, that solicitors, (who were made defendants to a suit together with their clients,) are not bound to answer interrogatories, if the answers would disclose communications to their clients from another person, not a party to the suit.

The bill was filed by the secretary of the Atlas Insurance Company against the trustees of the Eagle Insurance Company, for the purpose of obtaining a declaration that a policy of insurance, effected by the latter office with the Atlas, on the life of a Mr. Cochrane, was fraudulent, and therefore void; and of obtaining an injunction to restrain the defendants from proceeding at law on the said policy. Messrs. Beetham, the solicitors of the Eagle Insurance Company were made parties defendants to the bill: they had no interest in the suit. The bill charged that the Eagle Company, before they effected the insurance at the Atlas office, knew that Mr. Cochrane's was not an insurable life, for that their agent had applied to insure him at the office of the Economical Insurance Company, but was refused; and that the defendants were made acquainted with the grounds of that refusal, but withheld such knowledge from the Atlas Company. Several interrogatories, founded on this charge, were put to the Messrs. Beetham, which they refused to answer, on the ground that as they were solicitors to the Eagle Company, all communications to them from the company were privileged. They answered the other parts of the bill. The answer was excepted to, and the Master, upon reference to him, reported the answer insufficient. Messrs. Beetham excepted to the Master's report.

Mr. Pemberton, in support of the exception. The answer of his clients was excepted to, because they did not state what took place at a meeting at the office to which they were solicitors, and the answer was reported to be insufficient. The question therefore, was, whether they were bound to disclose what was said at that meeting at the Eagle office. He contended that a solicitor was not bound to answer as to facts that came to his knowledge in his professional character, and that the communications between him and his client were privileged. *Cromack v. Heathcote*,^a *Doe d. Shellard v. Farris*.^b

Mr. J. Russell, for the plaintiffs, said the communication in this case did not fall within the protection claimed to solicitors. The interrogatories applied to what the agent and actuary of the Economical office stated at the office of the Eagle, respecting the state of Mr. Cochrane's health. That agent was not the client of Messrs. Beetham; the communication from him was not confidential to them, and therefore not privileged. The privilege was never extended to cases where the solicitor had not acquired the information in his capa-

city of professional adviser: even where a communication was made by a client to his solicitor, not for his professional advice, but to ascertain a fact, it was held that such communication was not protected. *Bramwell v. Lucas*,^c *Sayer v. Birchmore*,^d *Greenhough v. Gaskell*.^e Several other cases were cited on both sides, and they may be found on referring to 6 Leg. Obs. 403; 8 Leg. Obs. 262; 13 Leg. Obs. 343.

Lord Langdale, M. R., said he had carefully considered this point, and examined the cases bearing on it, and he came to the conclusion that the weight of authority was in favour of the protection here claimed. The Messrs. Beetham were the solicitors to the other defendants, and it was in their professional capacity they were present at the office on the occasion, when the communication sought to be discovered from them, was made in their presence. He was of opinion that they were privileged from disclosing that communication, although, if it were not for the weight of authority, he might have a doubt of the policy of carrying the exemption from answering so far.

The exception was allowed.—*Deaborough v. Rawlins*, at Westminster, Nov. 24th and 25th, 1837.

Queen's Bench.

[Before the Four Judges.]

NEW TRIAL.

A writ of trial was directed to the sheriff of Middlesex. No notice was given to the defendant that the case would be tried as an undefended cause. It was so tried, being taken out of its turn for that purpose, the defendant's attorney not being present in the sheriff's court. A rule for a new trial was refused, on the ground that the attorney ought to have been present from the sitting of the court.

Mr. W. H. Watson moved for a rule to shew cause why a rule for a new trial should not be granted in this case. A writ of trial had been issued, directed to the sheriff of Middlesex, and the cause was tried, at the desire of the plaintiff's counsel, as an undefended cause. It was taken out of its turn, though no notice had been given that application would be made to the sheriff for that purpose. The defendant's attorney was not present, and a verdict at once passed for the plaintiff for 10*l*. Under these circumstances, the defendant applied for a rule for a new trial.

Lord Denman, C. J.—We cannot grant a new trial on this ground. Every person whose cause is in the list, ought to be in the court at its sitting, watching the course of the proceedings.

Per Cur.—Rule refused.—*White v. Poppleton*, M. T. 1837.

^c 2 Barn. & C. 745. ^d 3 Myl. & Keen, 572

^e 1 Myl. & Keen, 98; S. C. P. Cooper's Reports of Lord Brougham's judgments; and 5 Leg. Obs. 301.

MANDAMUS.

If a town clerk of an old corporation has been re-appointed to his office by the new corporation, but is subsequently dismissed, though not for any thing which would warrant removal from an office held during good behaviour, he is notwithstanding such an appointment entitled to compensation under the 5 & 6 W. 4, c. 76, s. 66.

Mr. Cresswell moved for a rule to shew cause why a *mandamus* should not issue, commanding the Lords of the Treasury to hear Mr. Tebbett's complaint, and to award him compensation for the loss of his office of town clerk of the borough of Warwick. Mr. Tebbetts had been town clerk of that borough under the old corporation, and clerk of the peace, and clerk of the justices there. When the new corporation was appointed he lost the two last offices, but he was re-elected by the new town council to the office of town clerk. From that office he was, however, in the course of a few months removed. In respect of these offices he had applied to the town council for compensation, but not being satisfied with the decision of that body, had appealed to the Lords of the Treasury, and he had obtained from them an order for a grant of a gratuity of a 100*l*. This sum was awarded to him in respect of the loss of the offices of clerk of the peace and clerk of the borough justices, but they dismissed his appeal for compensation in respect of the loss of the office of town clerk. It was clear from the Treasury minute that their lordships had done so on the ground that as he had been once re-appointed under the new corporation, he was not entitled to demand anything for the subsequent loss of his office, for that he was in the same situation as any other who might have been appointed in the first instance by that body, and who upon a subsequent dismissal would not be entitled to compensation under the act. [Mr. Justice Coleridge.—Then the Lords of the Treasury have heard him?] They had suffered his complaint to be laid before them, but they had not affected to decide on the merits of the case. It was clear that the dismissal of the demand for compensation for the loss of this last office was erroneous. The 66th section gave a right to demand compensation to all persons "in any office of profit" at the time of the passing of that act, and who were removed from such office in consequence of the passing of the act; and that general right was not taken away by the special words of the proviso at the end of the section, "Provided also that every such officer who shall be continued in or re-appointed to such office under the provisions of this act, and who shall be subsequently removed from such office for any cause other than such misconduct as would warrant removal from any office held during good behaviour, shall be entitled to compensation in like manner as if he had been forthwith removed under the provisions of this act, and had not been continued in or re-appointed to such office." There was no pretence here

that Mr. Tebbetts had done any thing which would warrant removal from an office held during good behaviour. It was clear, therefore, that the Lords of the Treasury had mistaken the law. Mistakes in matters of law made by jurisdictions of a particular kind would always be corrected by this court. In *Rea v. The Justices of York*,^a where a question was raised upon the construction of a local act of parliament, by which power was given to appeal to a jury for compensation for land taken by certain trustees appointed under the act, and the justices thought they had no power to award costs to the complaining party, this Court set right that decision, and gave the party his costs. The principle there adopted, had been before expressly acted on in the case of *Rea v. The Justices of Kent*,^b where the justices having refused to hear an application of the journeymen millers of the county of Kent, praying them to make a rate of wages under the authority of the 16 Car. 1, upon the ground that the statute gave them no jurisdiction over other than the wages of servants in husbandry, this Court granted a *mandamus*, requiring the justices to hear and decide on the application. It was admitted here on all hands, that Mr. Tebbetts must be considered as in office upon the tenure of good behaviour, and the only ground on which compensation had been refused him was, that the Lords of the Treasury had, under the particular circumstances of the case, no jurisdiction.

Lord Denman, C. J.—They seem to have applied a test, that the act of parliament did not look to, and they have thrown the burden of proving title on the town clerk who *prima facie* possesses it, instead of throwing the burden of disproving the title, as they ought to do in this case, on the corporation.

Rule granted. *Ex parte Tebbetts*, M. T. 1837. Q. B. F. J.

COMMON PLEAS.

JUDGMENT AS IN CASE OF NONSUIT.

In an application for judgment as in case of a nonsuit, where it is sworn in the affidavit that notice of trial has been given: that is sufficient, without a specific allegation that the cause is at issue.

Keating had obtained a rule nisi for judgment as in case of a nonsuit; against which

R. V. Lee shewed cause. An objection was taken to the form of the affidavit, in its not alleging the cause to be at issue. It, however, stated that notice of trial had been given. *Smythe v. Parslow*, 2 Cr. & Jer. 217, was cited.

Tindal, C. J.—I think enough is alleged; for how could notice of trial have been given unless the cause was at issue? The case cited differs from this.

Rule discharged on a peremptory undertaking.—*Corbyn v. Heyworth*, M. T. 1837. C. P.

^a 1 Ad. and El. 828.

^b 14 East, 395.

SETTING ASIDE ORDER.—DEMURRER.

Where on the 3rd May a Judge's order has been obtained to amend a declaration, the defendant is too late on the 10th June, in T. T. to apply to have it set aside.

Where a plaintiff has demurred to a plea to his declaration and obtained judgment, he may, nevertheless, on a Judge's order, strike out of his declaration that count to which the plea was pleaded without paying the costs of the demurrer.

Hoggins had obtained a rule for rescinding an order of Mr. J. Vaughan, by which the plaintiff obtained leave to amend his declaration on payment of costs; and

Wilde, Serj., shewed cause. The action, it appeared, was brought to recover two quarters' rent, and the defendant pleaded two pleas. To one of them the plaintiff demurred, and on the demurrer being argued, obtained judgment; and he then obtained a Judge's order to amend his declaration, on payment of costs. This rule had been obtained, on the ground that the order did not specify in what particular the declaration should be amended, and did not order the plaintiff to pay the costs of the demurrer, as well as of the amendment. It was now contended that the objection came too late. The order was made on the 3d May, and the present rule was not obtained until the 10th June, the last day but one of T. T., and it had been enlarged on the last day of Term, on the ground of its being too late to procure affidavits to shew cause in time. The defendant, besides, had acted upon the order, and had taken his bill of costs to be taxed, and had received the costs on the 3d June. The amendment was afterwards made in the declaration, and the defendant took out a summons and obtained an order for time to plead to the amended declaration.

Hoggins, *contra*, urged that the defendant was entitled to have the present rule made absolute. The plaintiff had succeeded on his demurrer, and had then immediately taken away from his declaration that portion of it to which the bad plea had been pleaded. The defendant, it was true, had received the costs of the amendment, but had not paid the costs of the demurrer. The rule having been obtained on the 10th June, and the Term not having terminated until the 12th, the intervening day being Sunday, there was plenty of time to shew cause in that Term. The defendant had now a judgment against him on a plea, with respect to which there was no count in the declaration, and he had been harrassed with an action, with respect to which there was no cause.

Tindal, C. J.—This application comes too late. Although it may appear that there is no declaration with regard to this plea, yet the plea falls with the count, and on the record being made up finally, neither will appear. I think the defendant is benefited by the course which the plaintiff takes in refusing to go on; and by his own neglect in not coming earlier

to the Court, the cause has been prevented from going down to trial.

Rule discharged.—*Baden v. Flight*, M. T. 1837. C. P.

Eschequer of Pleas.

REFERENCE.—COSTS ON RECOVERY OF LESS THAN 20l.

A case having been referred without any verdict being taken, but there being an agreement that the successful party should be at liberty to enter up judgment as if there had been a verdict, and the arbitrator having awarded less than 20l., held that the case came within the "directions to taxing officers," in the rule of H. T. 4 W. 4, and that the costs were to be taxed on the lower scale.

Platt had obtained a rule in this case for the review of the taxation of costs by the Master. It was an action of *assumpsit*, brought to recover the sum of 50l. on a special agreement; and the declaration also contained counts for money paid, work and labour done, and money due on an account stated. The defendant paid 2l. into court, and pleaded a set-off. The cause was referred to an arbitrator, without any verdict being taken, but it was agreed that the successful party should be at liberty to enter up judgment, as if a verdict had been obtained. The arbitrator made an award, and found for the plaintiff the sum of 10l. 10s., in addition to the 2l. paid into court; and, on the costs being taxed, the Master allowed them upon the scale of debts above 20l.

Kelly now shewed cause, and pointed out that the directions to taxing officers of H. T. 4 W. 4, were, that in all actions of *assumpsit*, debt or covenant, when the sum recovered or paid into court and accepted by the plaintiff, or agreed to be paid on the settlement of the action, did not exceed 20l. (without costs) the plaintiff's costs should be taxed on the reduced scale. It was submitted that the rule could not apply to a case like the present, where the matter had been referred to arbitration, for the money was neither recovered nor taken out of court. It was held under the 43 G. 3, c. 46, s. 3, that if a defendant, arrested for a certain sum, paid a less sum into court, which the plaintiff accepted in satisfaction, the case was not within the statute. *Davey v. Renton*, 4 D. & R. 187; *Bouvery v. Alison*, 13 East, 90; *Butter v. Brown*, 1 B. & B. 66. And in a case of *Keene v. Deehle*, 3 B. & C. 149, where the matter was referred to arbitration, and the arbitrator awarded the plaintiff a less sum than that for which he had held the defendant to bail, the same point was determined. So also in a case where a less sum was tendered by the defendant, but was not paid into court, and the arbitrator on a reference awarded that sum only, the defendant was held not to be entitled to costs. *Sherwood v. Tyler*, 3 Bing. 280. Here the judgment was on an agreement between the parties. The word "recovered" in the directions to taxing officers must mean

recovered by verdict, or judgment by default; for it was evident from *Holder v Raitt*, 2 Adol. & E. 445, that the finding of an arbitrator was not equivalent to a verdict. *Hooppell v Leigh*, 5 D. & C. 40, was also referred to.

Parke, B.—There should have been a further provision that the arbitrator should have the same power as the court.

Platt was stopped by the court.

Lord Abinger, C. B., was of opinion that the case was within the directions to taxing officers, and that there was a "recovery" of less than 20*l.* It was a recovery by process and judgment. If no case except that of recovery by verdict had been contemplated by the rule, he would have felt some difficulty, but it provided that a sum under 20*l.* being paid into court, and accepted in satisfaction, the taxation was to be on the lower scale. The word "recovered" applied to all cases where a party did not obtain more than 20*l.* by his process.

Parke, B., concurred.—There could be no hardship in cases of this description, because parties, on submitting to a reference, might always provide that the costs should be taxed on the higher scale. The "directions" had been held by the Court of Common Pleas to apply to judgment by default, and he thought this was a recovery of less than 20*l.* within the meaning of the rule.

Alderson, B., said, that to entitle a party to the costs on the higher scale he must, since the rule, shew that he had recovered more than 20*l.*

Rule absolute.—*Wallen v. Smith*, M. T. 1837. Excheq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assents.

23d December, 1837.

Municipal Officers' declaration.

Summoning Juries at adjourned Quarter Sessions.

Prisoners' removal, (Ireland).

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a select Committee.]

For regulating Charities. Ld. Brougham.

[This bill stands for second reading.]

PRIVATE BILLS.

Petitions for Private Bills not to be received after Tuesday, 20th March next, nor any report from the Judges thereon after Monday the 30th April.

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to children of tender age. Mr. Serjt. Talfourd.

[This bill stands for second reading on the 14th Feb.]

To amend the Law of Copyright.

Mr. Serjeant Talfourd.

[Leave has been given to introduce this Bill.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. Mr. Mackinnon.

To facilitate the recovery of possession of Tenements, after due determination of the Tenancy. Mr. Aglionby.

[This bill is now in Committee.]

To enable Recorders of certain Boroughs to hold a Court for the recovery of Small Debts. 14th Feb. Colonel Seale.

To make better Provision for collecting and distributing the Estates of persons found Bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

LAWS OF PROPERTY.

To improve the tenure of Copyhold and Customary Lands. Att. Gen.

To alter and amend the Law relating to the Mortgages of ships and vessels.

Mr. G. F. Young.

[This bill stands for second reading on 2d Feb.]

To enable Tenants for Life of Estates in Ireland to make improvements in their Estates, and to charge the inheritance with a portion of the monies expended in such improvements. Mr. Lynch.

To enable Tenants for Life, and Mortgagors in possession of Lands in Ireland to grant Leases, and to enable Tenants for Life of Lands in Ireland to make exchange, and for giving a summary partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous Bill stand for second reading on the 21st Feb.]

To enable married women, with the consent

of their husbands, to pass their interests in Chattels Personal. Mr. Lynch.

[This bill stands for second reading the 28th Feb.]

To amend the 13 G. 3, for the better cultivation, improvement, and regulation of the Common Arable fields, Wastes and Commons of Pasture in this kingdom. Lord Worsley.

[This Bill stands for second reading]

To amend the 6 & 7 W. 4, for facilitating the inclosure of open and arable fields in England and Wales. Lord Worsley,

To render the owners of small tenements liable to the payment of the rates assessed thereon.

[This bill stands for second reading on February 7th.]

CRIMINAL LAW.

To authorize the summary conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs, and Chairmen of Quarter Sessions, to reserve points of Law in Criminal Cases, for the opinions of the Judges. 12th Feb Sir E. Wilmot.

That certain offences to which the punishment of Death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel.

Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes Magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime.

Mr. Barneby.

[The third reading of this Bill is fixed for the 9th Feb.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intitled "An Act to amend the Representation of the People of England and Wales." 8 Feb. Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the Law for the trial of Controverted Elections, or returns of Members to serve in Parliament. Mr. Buller.

[This Bill has been brought in, and is now in Committee.]

To regulate the times of payment of rates and taxes by Parliamentary Electors, and

to abolish the Stamp Duty on the admission of Freemen. Id. J. Russell.

[This Bill is in Committee.]

To define and regulate the lawful expenses at elections of Members to serve in Parliament. Mr. Hume.

[This bill stands for second reading 19th Feb.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Perceval.

To amend the Laws relating to the Qualification of Members to serve in Parliament. Mr. Warburton.

[For second reading 5th Feb.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales. Mr. Hume.

[For second reading Feb. 19.]

THE EDITOR'S LETTER BOX.

The *Legal Almanac, Remembrancer, and Diary* for 1838, contains as well the latest information regarding the *Law Offices*, according to the late Statutes and Rules of Court, as all intelligence concerning the times of proceeding under the recent Changes in the Law, and all matters conducted by practitioners under the Reform, Corporation, Vestry, and various other acts. It also contains a Table of Precedence of the Bar, including the Barristers called during the year; and thus, with the former editions of the work, completes the List of the English Bar. The precise days of giving Notices under the Examination Rules are also stated, with the names of the Candidates for 1837, and the Attorneys to whom they were articulated. The Almanac, Lists, and Diary are peculiarly adapted for the use of all branches of the Profession.

We cannot accommodate "A Legal Student," by allowing the space formerly given to Queries and Answers; but we will admit discussions upon points of importance, and which appear to be undecided. This will be a more useful course to those whom we are desirous of serving than the method previously adopted of inserting dry questions and answers.

"Scotius" will find full information on the subject of his letter, in 1 Newland's Practice, 8th Chapter, p. 485, 486.

We fully agree with *Studiosus et Subscriptor* in his commendation of the Work he mentions, and regret we cannot find room for his letter. We will, however, bear his wishes in mind.

The Legal Observer.

MONTHLY RECORD FOR DECEMBER, 1837.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”
HORAT.

GENERAL REPORT OF THE COMMISSIONERS OF PUBLIC RECORDS.

I. GENERAL INQUIRY INTO THE STATE OF THE OFFICES.

THE duties which we were directed to undertake, by the new clause in our commission, appeared to approximate so nearly to those which had been performed in 1800, by the Select Committee of the House of Commons, that our attention was naturally directed to the means by which that Committee had been enabled to perform its labours, in a manner, universally acknowledged to be satisfactory. It was found that in the first instance, the Committee had applied to the keepers of the several offices by a circular letter, which contained certain questions, so framed as to draw forth whatever information the persons in daily connexion with the offices, were able to afford; and that thus having obtained considerable preliminary information, the Committee had afterwards visited in person the various depositories of records, in London and Westminster, and had ascertained by personal inspection, as well the character and state of repair of the buildings in which the records were deposited, as the condition of the records themselves. We very early determined to adopt measures of a similar kind; and with that view, we caused to be prepared a series of questions, which we sent to all keepers of public records, and other papers and documents. We also obtained from Mr. Illingworth, a gentleman who had had long experience in every description of business relating to records, having been at various times a keeper of records, a record agent, and a record editor, a written body of observations on presumed abuses in the offices, and supposed defects in the present system of management; which observations were printed for the separate use and private consideration of each member of the commission.

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The circular questions were framed in such a manner, as to embrace some particulars not found in those issued by the Select Committee of 1800; and the opportunity was taken of obtaining information respecting the improvements or changes which had been made since that year, so that we might be at once enabled to judge how far the recommendations of that committee, whose report we have, in accordance with the tenor of your Majesty's commission, regarded to a certain extent as our guide, had been carried into effect.

The circular questions comprehended many heads of inquiry, and were framed so as to produce very full information concerning, 1st. The kind of documents in custody. 2dly. The state of the building. 3dly. The preservation and arrangement. 4thly. The state of the calendars and indexes. 5thly. The officers and clerks, their duties, hours of attendance, salaries, fees, and emoluments. 6thly. The resort to the office. 7thly. The arranging, cleaning, repairing, and calendaring, since 1800.

Returns, which we have reason to regard as being, in most instances, exact and complete, were made from all the more important offices, and from most of those of a minor character.

In some instances, information supplementary to these returns, has been obtained by special inquiry.

A personal inspection of all the principal depositories of records, was undertaken on our behalf, by two of the commissioners, Sir Robert Inglis and Mr. Hallam. They proceeded, during several days, to make a minute examination of these depositories, and of the state of the records, with the assistance of two gentlemen from the office of Woods and Forests, Land Revenue and Works, and made to the Board a full report on the subject. Other Commissioners have also specially visited some of the offices for the same purpose.

By all these several modes of inquiry we have arrived at the following conclusions:

We cannot report favourably concerning

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many of the buildings now used as repositories for records. Although places of resort and of business, they are scattered in various parts of the metropolis, at considerable distances from each other, between the ancient palace of Westminster, and the Chapter House of the neighbouring Abbey, as one extreme point, and the Tower of London as the other; many of them being in very inconvenient parts of the town, at a distance from the superior courts of justice, the public offices, and all the most usual places of transacting legal business. The documents they contain form no unimportant portion of the national treasure, and yet some of the buildings are in situations of hazard and insecurity; almost all of them are unprotected against the risk of fire, and some are exposed to damp. Their internal arrangements are often confused, irregular, and ill adapted for the purposes to which they are applied.

These inconveniences have partly originated in the circumstance that in very few instances have buildings been erected purposely to receive these documents. The great majority of the buildings were originally intended for objects wholly dissimilar; for the private apartments of a royal palace, as at Westminster Hall: for ecclesiastical purposes, as the Chapter House and the Chapel of the Master of the Rolls; for a fortress, as the Tower; and many as private dwelling houses. It is true that by means of such alterations and contrivances as architectural ingenuity has from time to time suggested, the original unfitness of many of those edifices, has been much remedied, so that it might be improper to represent several of them as being absolutely unsuitable; yet, it must be obvious that such buildings can never be well adapted to purposes so peculiar in their nature, as storing the national records, and affording suitable apartments for transacting the business relating to them. We have also observed with concern, that in certain of these repositories, containing some of the most valuable and important documents, the rapid increase of the documents has occasioned such a demand for the utmost possible economy of space, that the records are placed in situations where the access to them is difficult, and from which even the light of the sun is excluded: of this the Rolls Chapel furnishes a remarkable instance. The same want of more convenient rooms, in which to deposit the records, has caused them to be sometimes placed in vaults and under-ground recesses, at once dark and damp; such as are the vaults at Somerset House; to which many of the records of the late officers, the Lord Treasurer's Remembrancer, and the Clerk of the Pipe, were committed, with the approbation of the Select Committee of the House of Commons in 1800.

With respect to the risk of injury from fire, recent experience must have taught all persons who have attended to the subject, and has particularly impressed on our minds, that the greatest precaution ought to be used: especially when it is considered that, as most of these documents exist but in single copies, their

loss is irreparable, and that with every one of them disappears the evidence of some fact in the transactions of former ages. In the construction of the buildings, with very few exceptions, no peculiar precaution against fire originating in the buildings themselves has been used; they were nearly all erected before the contrivances for rendering buildings what is called *fire-proof* were known. Many of them are situated in crowded localities, surrounded by private dwelling houses, in any of which a fire might originate. Even the Rolls Chapel, and the House of the Master of the Rolls, which for the present contains the records of the Court of King's Bench, are not exempt from this risk; while the depository of testamentary documents in Doctor's Commons and the College of Arms, are, from the character of the adjacent buildings, necessarily exposed to it. It may be added, that the First Fruits' Office, and other record offices in the Temple, are also in situations liable to the same calamity. Even with respect to buildings which are apparently, from their structure, more secure, fires may originate in other parts of a spacious edifice which may endanger remote apartments, in which these documents are stored; of which the peril of the records of the Court of Augmentations and others, in the fire of the 16th October, 1834, which destroyed the two Houses of Parliament, affords a striking instance. In respect of the two most important repositories, the Chapter House and the Tower, special grounds of apprehension have been received which have called for our attention and interference. In respect of the Chapter House, the building is found to abut on the kitchens of one of the prebendal houses; and in respect of the other depository, the vaults under the White Tower, in which tower many of the records are deposited, are at present actually the magazines of the fortress. We have, however, found that these particular causes of apprehension were stated as grounds of alarm more than a century ago, and as the explosion of the magazine, (should such a disaster ever occur,) would occasion not the destruction of the records only, but of the whole edifice of the Tower, of every person within its precincts, and of the surrounding neighbourhood to a very considerable distance, we are persuaded that every precaution will always be taken to avert so dire a calamity.

We have found that some of the records have been in places of merely temporary deposit, ever since the year 1822. These are not records of little or no value, nor are they of small extent; they are the records of the Court of Common Pleas, with the far larger portion of those of the Auditors of the Land Revenue, and of your Majesty's Remembrancer which, previously to that year, have been in the long gallery, and in various apartments on the west side of Westminster Hall. The history of their removal from place to place is remarkable, and illustrates the difficulties which attend the conservation of such immense bodies of documents. When, in 1822, the gallery and apartments which con-

tained them, were taken down to make way for the new courts of law, a large wooden shed was constructed in the Hall, to which they were at first consigned. In 1830, they were transferred to the ancient mews at Charing Cross; and when that edifice was about to be taken down to make way for the National Gallery, they were removed to the riding school of the late Carlton House, where most of them now remain. Every one of these places of temporary deposit was manifestly ill adapted to receive them; considerable expence was incurred in the transfers, and in making such preparation for their reception as was absolutely indispensable; and we have also reason to believe that no small loss and injury was sustained in their removal to the shed in Westminster Hall, and during their continuance in such an unsuitable depository.

It is manifest that records so circumstanced, must necessarily be in a state of confusion, and present an appearance of disorder and neglect. It will be found, in the progress of this Report, that we have not been inattentive to the state of these records, or inactive in our endeavours to arrest the progress of mischief, and to reduce them to some state of order and regularity. We thus particularly allude to them, not to convey any censure on the persons who have them in charge, but on the contrary, to shew in what a state of confusion important records must necessarily be, when they have no suitable and proper receptacle. In buildings, however, which are not mere temporary repositories, but which have been from very remote times the place of accustomed deposit, we have occasionally observed that there is neither the orderly arrangement and disposition of the records which the keepers would, in other circumstances, undoubtedly have made, owing to the want of space in which to bestow a constantly accumulating mass, nor the means of such secure preservation as such valuable documents undoubtedly demand.

The various defects which appear to exist in the buildings appropriated to the custody of the National Records,—defects which are universally admitted, and which require a remedy, may be shortly summed up in the following particulars:—

That the buildings are inconvenient in point of situation, ill adapted to the purposes to which they are applied, some of them crowded to an excess which renders the use of the records extremely difficult, and none of them provided with sufficient accommodation for that purpose; that some of them are exposed to risk of fire, and others to certain destruction by damp; and that there are large masses of records in depositories which are avowedly only temporary, and for which, sooner or later, some permanent place of deposit must be provided.

Our attention was not only directed to the state of the depositories, and the records contained in them, but also to the duties of the officers, their salaries, fees, and emoluments, and the general course of their business. The seventh and the eighth of the circular ques-

tions were directed to these points, and the replies to them from the several officers shew the information they elicited. Further information was gained from personal enquiries, and also from the observations to which reference has before been made. To bring the important subject of salaries and fees more completely under our view, the secretary, by our order, laid before us, in one view, the replies on this subject given to the circular questions, those to the like questions of the Select Committee in 1800, together with extracts from the Appendix to the 27th Report of the Select Committee on Finance in 1798, and other extracts from the Reports of the Commissioners, commonly called the Fee Commissioners, appointed for examining into the duties, salaries, and emoluments of the officers, clerks, and ministers in the several courts of justice in 1818 and 1822, with occasional information collected from printed works or manuscript collections.

Having thus had the important subject brought, as we believe, fully before us, we found that our own enquiries, and, to a certain extent, our own conclusions, had been anticipated by the Fee Commissioners in 1818 and 1822; whose enquiries being limited to this subject, might therefore reasonably be expected to have been more minute and exact than ours. But we cannot suffer the opportunity to pass without observing that, while the result of our own inquiries has not been to establish any charge of exaction beyond the fees on searches and copies sanctioned by usage, or any decided disproportion between duties performed and emoluments received, (except in some instances where prescription is pleaded,) or any obvious neglect of duty, it has also produced an impression of the want of uniformity in the several departments. We have seen indeed, in some instances, that the profits arising out of the custody of records, were so disproportioned to even the smallest amount of service, that nothing but indifference and neglect could be the results. We are also aware that, when the remuneration of the officers and clerks arises from fees, without fixed salaries, the fees usually received are sometimes felt, and especially in the cases of claims to ancient dignities, to be a severe tax upon persons who have occasion to resort to these documents for the purpose of establishing or of defending a right. The severe pressure of the established fees in some of the offices we have found, in certain cases to be enhanced by established usages; particularly that of demanding the same fee for the production before the House of Lords, or any other tribunal, of each one of a number of rolls, which is required for one roll, when only one is wanted, and that of compelling persons to take transcripts of the whole of a long document, when they require a single clause only. There are other practices to which it appears that reasonable objections may be made, as, for instance, that of *clerks in the offices acting as record agents for parties in suits*. This practice opens the way for *unfair employment of the record evidence*

of the country, which is, by law, common and equal among all litigant parties.^a The hours, during which some of the offices are open, have also appeared to us to be too few for the convenience of the public.

But that with which we have been principally struck, with reference to this portion of our inquiry, has been the singular irregularity which, in all these respects, pervades the whole of the present system. In no other branch of the public service is there any thing of the kind, nor is there any sufficient reason why it should exist with reference to officers having the custody of records. It manifestly tends towards confusion, and cannot but be highly inconvenient and detrimental to the public. Instances might be advanced almost without number, but a few will suffice to exemplify what is meant.

The officers are paid, some by salary only, some by fees only, some by both; the offices are open to the public at various hours, from 10 to 1, from 11 to 1, from 11 to 3, from 9 to 2, from 10 to 2, and some again in the evening from 6 to 7, from 6 to 8, and from 6 to 9: a search for a record at various offices costs 1s., 2s., 3s. 6d., 6s. 8d., 8s. 4d.; a search for a year costs 1s., 1s. 4d., 2s., 3s. 6d.; a general search costs 4d. for every term searched, or 1s. for every day the applicant comes to search; or 2l. 2s., or 3l. 3s., or 5l. 5s. per day; a copy of a document will cost, at various offices, 4d. per folio, or 6d. or 8d., or 10d., or 1s., or with the addition of other inseparable charges, even 2s., or 3s. 6d.; at one office the folio contains 72 words, at another 90; in one place the applicant may search for himself, at another the search is made for him; at some places to which all classes of the public continually resort for the purpose of making personal searches, the characters and the entries are made in a character which few persons can read; in others, where the searches are confined to professional persons, the ordinary handwriting is used; some of the most important entries are improperly made on paper, some on parchment; and whilst in some places the records are bound in books, in others they are kept on shelves, in presses, on files, in boxes, in bundles, or altogether loose.^b

With evidence of the existence of such irregularities, we could not but desire to adopt measures that might remove the irregularities, and diminish or destroy whatever was perceived to be an evil. But the subject was found to be surrounded with many great and often insuperable difficulties. As long as the present system continues, some irregularity there must be in the amount of the fees; because there

are some record offices in which searches are rarely made, or seldom in comparison with others, while the hours of attendance and the responsibility of charge and custody are the same. Power to alter, we had none: the utmost we could do, was to recommend. In-veterate usages cannot often be at once removed, without some worse evil arising in their stead; and when public officers have succeeded to their places, with the expectation that the duties and emoluments of their predecessors, are to be the standard by which their own duties and emoluments are to be measured, it is no easy task to convince them either that the one should be enlarged or the other diminished. The difficulties are greater, when such reforms are made in particular instances only, and not as the application of some common and comprehensive principle.

We have also seen, that the actual pressure of the evils which attend the system that has been so long in operation, is greatly reduced by several recent changes in the law, particularly those by which actions relating to real property are limited, the time of prescription, (and especially in tithe cases) is shortened, and the elective franchise placed upon a more simple and uniform foundation.

We have not, however, abandoned the opinion which we formed soon after our appointment, when the subject was first brought before us, that, where a convenient opportunity presented itself, it would be expedient to introduce material changes in the course of business in the offices, the hours of attendance, and the system of remuneration; that an equalization or adaptation of reward to service should be adopted; that a strict system of rule relating to the custody and use of these documents should be established, together with a general system of subordination. The introduction of a system of uniform management appears to us, we confess, hopeless in the present state of the records and offices; and we see, in the necessity for the adoption of some such general system of management, an additional and very urgent reason for the adoption of a plan, which we now beg to submit. The plan we regard as being the only mode, by which the defects we have before pointed out, in the buildings and state of the records, as well as in the arrangement and system of the offices, in the fees, and in the general course of their business may be properly, sufficiently, and most easily remedied.

While we have looked forward to this measure as the best, if not the only, adequate corrective of the existing evils and abuses, we have not, however, been inattentive to such opportunities as have presented themselves of introducing partial reforms. When, in 1834, the office of chief clerk at the Tower became vacant, we suggested to the Lords Commissioners of the Treasury the propriety of forbearing to fill up the vacancy; when in the same year, the office of Keeper of the Records at the Chapter House became vacant, and Sir Francis Palgrave was appointed, we laid before their Lordships, on being requested so to do,

^a This is a very important professional point to which the attention of the Law Society may well be directed. *Ed. L. O.*

^b The regulations lately made by the Judges as to the attendance at the Law Offices, and the fees to be fixed for office copies and extracts, may be usefully consulted on these points. *Ed.*

a report on the establishment which would be necessary to assist him, and on the fees which should be charged for searches and copies; and finally, with a feeling of the importance to men of letters of having easy access to documents of great historical importance, we have given our influence (power we have none) to obtain, in such cases, a remission of the ordinary fees of the offices.

II. IN WHAT MANNER THE NECESSARY REFORMS AND ALTERATIONS MAY BE BEST CARRIED INTO EFFECT.

The commissioners next proceed to recommend as follows:—That the most important portion of the public records should be removed to some one or more new depositories well adapted to receive and secure them, and where they may be properly arranged, and placed under a system of management in which they may be more easily accessible, and in which also, whatever is unwise, irregular, or exorbitant in the rules, usages, or fees of the present offices, may be rectified.

In approaching a subject which involves a considerable immediate expenditure of the public money, and which ought not therefore to be treated hastily or lightly, we beg leave in the first place to submit that, in the great outline of the proposed plan, and as to the absolute necessity of a correction of the evils of the present system by such means, we have been unanimous.

As separate edifices have been erected for the reception of the state papers, and of the records of the Duchy of Lancaster, it might be maintained that a similar building should be raised to receive the records of the receipt side of the Exchequer, the depositories of which have long been especially pointed out as unsuitable; another to receive those of the King's Bench, now in the house belonging to the Master of the Rolls; another to receive the vast and crowded contents of the Rolls Chapel; another for those of the office of First Fruits, and other record offices in the Temple; another for those of the late offices of Lord Treasurer's Remembrancer, and Clerk of the Pipe, now in the vaults of Somerset House; another for the records of the King's Remembrancer, dispersed in three depositories, of which one is recent and temporary; and another for each of the other classes of records, which are at present in repositories in which it is not intended to keep them: and by this means the individuality and integrity of each office would be maintained. But this has not appeared to us to be a scheme which we could recommend, nor have we felt that we should be justified in presenting a specific proposal for the destruction of any existing depository, in order to erect another in its place.

The other alternative was the erection of some *one edifice*, constructed purposely to receive the records, or such portions of them, as it might be judged improper or inconvenient to allow to remain in the depositories at present provided for them.

The chief disadvantage attendant upon the

erection of only one depository, would be the risk that, in case of fire, the great mass of the public records might be destroyed at once; a calamity so serious, that its mere possibility is sufficient to entitle the opinions of those who object to the erection of one building, solely upon that ground, to the most attentive consideration.

But on the other hand, it should be borne in mind,—

1. That the apprehended destruction would be scarcely within the bounds of possibility, in a properly constructed building, and under an efficient system of management; * and,—

2. That the great recommendations of one general deposit are its unquestionable economy, and the means it would present of more easily attaining an exact uniformity and certainty of system; while to historical inquirers and persons engaged in legal and constitutional researches, it would be an additional advantage, that documents relating to the same transaction, which have passed different offices, and are preserved with slight variations in the archives of each, may be compared together with more facility and convenience when collected in the same repository.

Whether, however, one building or more be erected, it has appeared to us, that a very comprehensive measure should be adopted; that the time has come for superseding many of the old depositories, and for placing their contents, together with those important documents which since the year 1822, have frequently been removed from place to place, in some general and fixed place of custody.

The buildings should be constructed purposely for the reception of records, and prospectively with a view to their gradual, but certain increase. Those now in the Tower, the Chapter House, and the over-crowded Rolls Chapel, and in most of the minor depositories scattered throughout the metropolis, should be collected in this one capacious repository. But we do not propose that this arrangement should at all interfere with the custody of such records, relating to *recent or pending proceedings in our courts of justice*, as, in the opinion of the Judges, ought to be kept under the immediate care of their officers.

The adoption of a plan of general deposit, would necessarily occasion such a change of the present system of custody, and of the present mode of transacting all business relating to public records, as would present an opportunity of laying the foundation of a new scheme of management, adapted to the wants of those who use the records, and suitable to the importance of the documents themselves. The whole of the records might be placed, as in Scotland, in the legal custody of one of the Judges or great officers of state; without whose authority certain measures, such as the

* The general building might be so divided that a fire happening in one part, would not in all probability, extend to other parts. Ed. L. O.

transfer of records, should not take place. The control and direction of them should be entrusted to a single person, who should have no other avocation besides the care and superintendence of the records, and should have a sufficient number of clerks under him, for the preservation and arrangement of the records, and for the accommodation of the public. The number of officers should be in strict proportion to the care and labour to be performed; their duties should be adequately defined; their payments should be chiefly, if not entirely, by salaries; and the fees should be reduced to a fair and moderate scale. The irregularities of the present system would be removed, by the removal of the causes of them; an improved arrangement might be effected; worthless documents discarded; those purely literary, and one part of those which exist in duplicate, might be transferred to the British Museum;^d and the whole business be conducted upon general principles, accommodated to every reasonable expectation, both of the literary inquirer and the man of business; whilst the most material points of all were kept steadily in view, the safe custody and integrity of the documents themselves, and making them as subservient as possible to the administration of justice.

We are inclined to believe that such a measure, although necessarily involving a present expenditure, would ultimately be found to be one of real economy. Large sums have been expended in the removal of records, from one place of temporary deposit to another; further sums will be required for the same purpose. A building must be found for the reception of the records of the Court of King's Bench, now in the house of the Master of the Rolls; another for those of the Court of Common Pleas, now in the stables at Carlton ride; some new building will shortly become indispensable to relieve the Chapel of the Rolls; many others of the present offices stand in need of additional room, and the repairs of the more ancient of them are a source of continual expenditure. All these expenses must be incurred to perpetuate a system, which is universally admitted to be inconvenient and discreditable: a little greater outlay might remove every objection. Under the present arrangements, considerable sums of money are paid directly out of the Treasury, in allowances and other expenses connected with the record offices; other sums, which come ultimately out of the public money, are laid out in the salaries of officers whose offices would be merged in a general establishment; which salaries it may be expected that an equalization of duty would reduce.

We long since proceeded to take certain steps towards the execution of this design. It appeared to us, that a portion of the *Rolls Estate*, in *Chancery Lane*, would afford a most desirable site for a general repository; and in

the year 1833, with the concurrence of Sir John Leach, then Master of the Rolls, we caused surveys, plans, and estimates to be formed, and with the sanction of government, a bill was drawn, intitled, "An Act for empowering the Commissioners of his Majesty's Woods, Forests, Land Revenues, Works, and Buildings to erect a General Record Office, and to empower the Society of Judges and Serjeants at law to build new Chambers for the Judges, and for other purposes." In this bill our designs were embodied. But objections were made to the proposed mode of defraying the expence out of the fund of the suitors in the Court of Chancery; and other difficulties arising, no subsequent opportunity has yet been found for bringing the subject forward. But we have never lost sight of it; and with a view to its being ultimately carried into effect, suggested to government, upon the occasion of the appointment of the present Master of the Rolls, certain arrangements with respect to the relinquishment of his interest in the Rolls House, in case the same should be wanted for the accomplishment of this desirable object, in which his Lordship readily concurred.

III. METHODISING, ARRANGING, REPAIRING, CLEANING, BINDING, CALENDARING, INDEXING, TRANSCRIBING, AND TRANSFERRING.

Attention to these operations has been enjoined on the successive commissioners, with the exception of transcribing. That appears first of all in the commission of 1831; although much transcription has been done under the previous commissions, both with a view to printing, in which case it was indispensable, and with a view to the formation of transcripts for perpetuation.

Ever since the issuing of the first commission, these operations or some of them have been going on, in such of the offices as from time to time seemed to require them most; whether in respect to the value of the documents themselves, or to the state of decay or derangement into which they have been permitted to fall. The processes more properly manual, or in which the amount of manual is in great excess above the intellectual labour, such as repairing, cleaning, and binding, have been executed by workmen in the immediate service of the board; while in the processes of arranging, calendarizing, and indexing, we have sometimes availed ourselves of the services of gentlemen connected with the offices, who have been encouraged to devote their extra hours to those employments, and have sometimes committed them to gentlemen in our own immediate employment. We never were disposed to consider it as a part of our duty to relieve the clerks on the several establishments from the duty of maintaining a good arrangement of the records, of keeping up the calendars and indexes, and of filling up spaces in the calendars of the older records, or to relieve the heads of such establishments from the duty of exercising a vigilant superintendence over the clerks.

^d This suggestion would further diminish the anticipated consequences of destruction by fire. ED. L. O.

One of the points to which the circular letters were directed, was to ascertain what had been done in these departments under the previous commissions. Thus, in the sixth question it is asked, How many volumes of calendars or indexes had been formed since 1800? In the tenth, What alterations had been made in the condition or arrangement of the office? And in the eleventh, What records had been cleaned, repaired, and bound?

But it is the principal object of the present Report to state what has been effected under the existing commission.

Arranging, repairing, cleaning, and binding.—We found, on our entrance upon our duties, that these operations were proceeding at four of the principal offices, namely, *The Chapter House, The Augmentation Office, The Duchy of Lancaster Office, and the Rolls Chapel.* The workmen of the commission were proceeding under the immediate direction of Mr. Cayley, the secretary to several of the former commissions. He was instructed to continue the superintendence, and to make quarterly reports of the number of books, records, rolls, and instruments which were bound or cleaned, flattened and repaired. This he continued to do till near the time of his death. When Mr. Cayley became incapacitated by age and ill health, the direction of these operations was committed to the present secretary, or to such person as he might appoint. The workmen employed at the office of the Duchy of Lancaster have been withdrawn, for the purpose of being employed in more pressing duties elsewhere; the work at the Rolls Chapel has been continued; and the operations have been of late conducted with more activity at the Chapter House, with peculiar assistance from the Stationery Office, under the immediate direction of Sir Francis Palgrave.

The records at the Augmentation Office were thrown into confusion by some of them being hastily removed at the time of the fire which consumed the two houses of parliament, and which was supposed for some time to place the Augmentation Office in imminent hazard: some were removed to the choir of Saint Margaret's church; a few it is feared were lost; and many suffered great injury from being trodden under foot or soaked in water. Every exertion was made on our part to remedy this mischief. During many weeks our workmen were employed in drying, flattening, and repairing the documents which had suffered damage; and ultimately the contents of the office were again placed in some state of order and arrangement.

We found a great mass of the records of the King's Remembrancer lying at the mews, to which they had lately been removed from the wooden shed before spoken of in Westminster Hall. Most of these were in a state of extreme neglect and disorder. Such was their confused condition, that it was almost in vain to prosecute a search for any particular document, and they were moreover suffering from damp and vermin. We determined at least to attempt to remove the causes of injury, and to

reduce this vast and irregular mass to a state of arrangement. For this purpose we obtained from the Lords of the Treasury, an order transferring them to our temporary custody; and, by the aid of workmen, under the direction at first of officers in that department, and afterwards of an agent of our own, we have caused a large portion of them to be sorted, cleaned, and calendered.

In another of the Exchequer offices, that of the Clerk of the Pells, the records had long been in a state of neglect, no searches had been made in them for purposes of business. We have given assistance to Sir John Newport, who has the custody of them, and who has himself undertaken to have them examined, arranged, and cleaned.

The records in the lately abolished office of *Clerk of the Pipe* may be divided into two distinct classes, remarkably contrasted as to their value. One consists for the most part of foreign accounts, of recent dates, in which searches are rarely made, either for the purposes of business, or for the gratification of historical curiosity: the other is the noble series of the national accounts, commonly called the *Pipe Rolls*,—a series commencing with the second year of King Henry the Second, and reaching to the second year of King William the Fourth, unequalled in the archives of the other nations of Europe. The former are in the damp and dark vaults of Somerset House. Of the latter, the more ancient and valuable portion was for a time, at our suggestion, removed into a room better fitted to receive such inestimable documents: but the late changes in the Exchequer offices, heretofore at Somerset House, have left no place to receive them but the vaults from which they have been removed,—a situation being chosen for them the least unfavorable to their safe conservation. To this series our attention was very early directed. We found that thirteen of the rolls were not in their places, and were supposed by the officers of the pipe to be lost. Presuming, however, that the lost rolls must in all probability still be among the records of the office, or those of the Lord Treasurer's Remembrancer, with which these records were partly intermixed, we caused diligent search to be made for them. The result is, that eleven have been recovered; so that in this series of annual accounts, consisting when entire of 676 rolls, only two now are wanting. These rolls have also been cleaned and repaired.

The improvements which have been made at the Tower have proceeded under the direction of Mr. Petrie, the Keeper of the Records in that repository, who has made yearly reports of his proceedings to our Board; with the exception of what has been done to the letters and other minor documents in that depository, not referrible to any of the great classes into which the contents of that repository are distributed, but spoken of under the vague term "*Miscellaneous.*" On these we have had several persons employed, and a large portion of them has been examined and described.

The money which we have expended, on the various operations included in this section of our Report, has exceeded the sum of 10,000*l.*; but when the immense magnitude of the mass of records is considered, the little attention which was paid to them, and especially to the smaller documents, previously to the establishment of a Record Commission, and the state of decay into which, through time and neglect, they had fallen, it will not be matter of surprise that still very much of this species of labour remains to be performed.

Calendaring and Indexing.—In the case of the Records of the King's Remembrancer and of the Court of Augmentations, these operations have proceeded along with the operations of ascertaining, assorting, and arranging. At the Tower, much has been done in calendaring the Miscellaneous documents; and a calendar of heirs named in the Inquisitions *post mortem* at the Tower is in a course of preparation. The reports from the Chapter House appended to this Report, shew the progress made in that repository in forming calendars of records of which no calendar previously existed.

The importance and value of calendars and indexes to records of particular descriptions is well known to, and has never been lost sight of by us; we know also that (with respect to such records) calendars and indexes do exist in the offices, more or less perfectly formed by the labour of the officers and clerks in those establishments, whose special duty it is to frame them. But the idea of making copious calendars and indexes to the whole of the National Records, however specious it may appear both in respect of practicability and utility, we regard as altogether vain and chimerical. In respect of many of the records it would be wholly useless in any other point of view than as a species of transcript of the original record; which, if removed from the office in which the record itself was deposited, might increase the chances of preservation. But the great expense, which would attend the formation of such calendars, demonstrates the impracticability. To form, for instance, a calendar of the documents enrolled on the Chancery Rolls alone, from the beginning of the reign of King Edward the First to the close of the reign of King Edward the Fourth, little more than 200 years, would of itself cost more than 20,000*l.*; and yet these rolls are but a small part of the whole contents of the Record Office at the Tower, and are in a very low ratio indeed to the whole body of the National Records.

It has appeared to us that a great distinction is to be made, in considering this subject, between a series of inrolments and a mixed assemblage of documents, various in their origin, nature, and character, such as is found in all the great depositories. When the kind of document inrolled in any particular series is known, and when the date of any document for which search is made is also previously determined, the search can rarely be fruitless. But, in a mixed multitude, containing documents of every class

and age, nothing can be known but by an enumeration of each particular instrument; and hence it has been that we have directed our efforts, rather to the formation of calendars of miscellaneous records, than of those which are enrolled; and the Appendix to this Report will exhibit some evidence of what, in this respect, we have been able to accomplish.

We have caused to be printed also three valuable Indexes to Domesday Book, a useful and necessary Supplement to the Indexes which a former Commission had published to that Record, and strictly within the recommendation of the Report of the Committee of 1800. We have contemplated also the formation and publication of an Alphabetical Index of Testators and Intestates, of whose goods administration has been granted by the Prerogative Court of Canterbury, as a means of opening more fully, both to the literary inquirer and to the public, the information which is to be gathered in that chief deposit of the testamentary evidence of the country.

Our attention has been directed to the calendars and indexes in some of the offices, which are claimed as the private property of keepers or clerks on the establishment. Of the value of some of these no doubt can be entertained. We have been in negotiation for the purchase of those at the Rolls' Chapel, which belonged to the late Mr. Kipling, and those at the Augmentation Office, which were considered as the property of Mr. Calev. In both instances, the negotiation went off on a question of value. Those relating to the Augmentation Office were of less importance, on account of contemplated changes in the arrangement; but those at the Rolls' Chapel, have continued to be in our view; and a clause was inserted in the bill respecting the General Record Office, providing for the purchase of them, if they could be obtained at a price below a sum which is there named.

Transcribing.—A clause introduced for the first time into the Commission under which we act, directing us to cause accurate copies to be made of some of the records, we have regarded as being intended especially to authorise the continuance of operations which had been conducted under the previous Commissions. Transcripts we have contemplated under three distinct lights,—1. as a necessary preliminary to printing; 2. as a means of preserving the matter of a record; 3. as when made and placed in the library of the British Museum, or in any other public library, opening access to the information contained in the document, and facilitating the study and use of it.

For these purposes many transcripts have been made, partly by persons on the record establishments, and partly by other persons in our own immediate service. For the purpose of providing a succession of able transcribers, we have taken into our service various young men at small salaries, working under the Sub-commissioners and other agents of the Commission. The difficulty experienced

by the former Commissions; in finding persons capable of making copies of the ancient documents with correctness, was a plain indication to us that it was expedient there should be young men thus trained to an acquaintance with the diplomatic art. We are informed that the same thing is done at Munich and at Lißbon. The *Ecole des Chartes* at Paris is, however, an institution which this in its incipient stage, may be said more nearly to resemble; and it has been hoped to make this school of transcribers approximate more nearly to it, by imparting to them direct instruction in the diplomatic art, as a preparation for which, for their use and that of their teachers, many expensive books relating to that art have been placed in the library of the Commission.

Transferring.—The Select Committee of 1800, seem to have contemplated that there was a necessity for transferring many records, from the depositories in which they were then placed, to others, and that there would be no formidable obstacle to the measure. Little, however, has been done, and little perhaps could be done: for it has been doubted how far the keepers would be justified, without legislative authority, in suffering any of the records delivered to them to pass out of their custody. One transfer has, however, been made by us; by which, as we believe, we have opened to literary curiosity a wide field of historical information.

It was the practice of early times, to cause some of the more important transactions to be recorded in duplicate. Those duplicates, although there is not a minute verbal correspondence, agree in substance, so that one is seldom more as to substance than a mere copy of another. The Pipe Rolls are thus in duplicate. There has descended with them a corresponding series called the Comptroller's or the Chancellor's Rolls, between which, and the Pipe Rolls, the differences are slight. This series commences with the eleventh year of King Henry the Second. Having been always regarded as of inferior dignity and importance to the Pipe Rolls themselves, less care has been taken of them, so that many are not now to be produced; and no searches ever being made in them, the officer, in whose custody they were, consented that the earlier of them should be removed to the library of the British Museum. They are 293 rolls in all, intervening between 11 Henry 2, and 17 James I.

[To be continued.] *Ja. 1873*

LAW OF FRANCE.

FEES OF PHYSICIANS.

THE case of *Drs. Wolowski and Koreff v. The Earl of Lincoln*, which we lately noticed (p. 85), has been decided on the main points in favour of the Earl of Lincoln. The Earl had deposited 30,000 francs, and admitted the claim of the physicians to the extent of 24,000; and the decision in effect negatived the extraordinary claim of 400,000 francs, at first made, though afterwards abandoned; and the Court also decided that the manuscript

journal of the malady of the Countess of Lincoln, with the notes of the family and of the physicians, should be delivered up, and in case of refusal, inflicted a heavy penalty for each day's delay. The judgment as to *costs* is rather peculiar: it directs that Lord Lincoln shall pay one-eighth thereof and the Doctors the remainder, each of them in moities.

There appears in these proceedings to have been a *joinder* (if we may so term it) of causes of actions rather singular, and somewhat difficult to deal with. On the one hand, the claim of the Doctors; and on the other, by the Earl of Lincoln, a claim for damages for an illegal arrest, and also for the delivery of MSS. and letters, and the completion of a journal of the malady of the patient; and mixed up with these claims are complaints by the Doctors of a want of courtesy towards them, and by the Earl of Lincoln and his family of improper demands and disclosures by the physicians.

No question was raised as to the right to recover their fees, as it appears by the law of France that physicians may recover for their fees. Mr. Okey, in his Digest of the Law affecting the subjects of Great Britain, states, however, that actions by physicians, surgeons, and apothecaries for their visits, operations, and medicine, are limited to one year. The parties in this case were foreigners; but, according to the same Digest, the French Government, when it thinks fit, may grant permission to foreign physicians or surgeons to practise medicine or surgery in France. This permission is by *ordonnance du Roi* after due examination as to the degrees and qualification of the party. English physicians, surgeons, and apothecaries are allowed to practise among their own countrymen without an *ordonnance du Roi*, but other persons, not duly authorized, administering medicine, are liable to be fined and imprisoned.

The following is from the conclusion of the judgment:—

“Reçoit le duc et la duchesse d'Hamilton intervenans seulement sur la demande du comte de Lincoln, tendant à la remise des notes confiées aux médecins;

“Les met hors de cause pour le surplus;

“Donne acte à Koreff et Wolowski de leurs désistemens de leur demande en paiement d'honoraires;

“Donne acte au comte de Lincoln de ce que, remettant ou faisant remettre à Wolowski et Koreff ladite somme de 24,000 fr. déposée dès avant le procès entre les mains de Ferrère-Lafitte et destinée spécialement par la famille aux lits sieurs Wolowski et Koreff, ceux ci seront plus que de droit et jrs largement retribus pour leurs honoraires et salaires, à raison tant des soins par eux donnés à la comtesse de Lincoln que des travaux de rédaction du journal de sa maladie et au moyen de cette offre déclare le comte de Lincoln libéré, déclare Koreff et Wolowski mal fondés dans leur demande;

“Autorise le comte de Lincoln à retirer des mains de Lafitte les 6,000 fr. qui excèdent les 24,000 fr. offerts;

“CONDAMNE Koreff et Wolowski à remettre

entre les mains du comte de Lincoln le complément du journal de la maladie de la comtesse de Lincoln les notes écrites par le duc et la duchesse d'Hamilton, le comte et la comtesse de Lincoln et le frère de celle-ci, même celles qui se trouveraient en partie écrites par les médecins;

"Dit que cette remise aura lieu dans la quinzaine de la signification du présent jugement, si non et faute par eux de le faire dans ledits délai et icelui passé, les condamne solidement à payer au comte de Lincoln la somme de 100 fr. pour chaque jour de retard, et ce, pendant un mois, au bout doquel temps et à défaut d'exécution sera fait croit;

"Déclare le comte de Lincoln mal fondé dans sa demande en dommages-interets;

"Fait maste des dépens qui seront supportées par le comte de Lincoln, et le surplus par Wolowski et Koreff chacun par moitié."

BARRISTERS CALLED.

Michaelmas Term, 1837.

LINCOLN'S INN.

Robert Anderson.
Thomas Cowan.
William Overend.
George Samuel Evans.
Francis Leyborne Popham.
George Hansard.
William Heather Norie.
Henry Austin Bruce.
Walter Anthony Hopper.
George Henry Jones.
William Henry Whitehead.
William Spooner.
Richard Fellowes.
Isaac Spooner.
Robert Pryor.
Charles William Borrett.

INNER TEMPLE.

Robert Pashley.
Thomas Dickinson Hall.
James John Fitz-James.
Samuel Warren.
William Davy Watson.
Francis Hastings Doyle.
John William Peard.
George Charles Allen.
Charles James Cruttwell.
Thomas Coxhead Marsh.
William Gledstanes Ponsonby.
John Edward Walker.
Henry Sedgwick Wilde.
John Inglis Chalmers.
Anthony Miguel Jones.
Peter Moncrieffe.
William Wellington Cooper.
Edward Brooke.

MIDDLE TEMPLE.

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William Stevenson.
Henry Warner.
Richard Hilditch

Charles Bagot.
Henry Carter.
Edward Holmes.
Humphrey Sandford.
William Thomas Maunsell.
Samuel Barrett.

GRAY'S INN.

John Johnson.
Septimus Holmes Godson.
Charles John Shebbeare.

CANDIDATES WHO PASSED THEIR EXAMINATION IN MICHAELMAS TERM, 1837.

<i>Candidates' Names.</i>	<i>Attorneys to whom articled.</i>
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Adams, William	William Mason.
Arrowsmith, Joseph	John Stratford Collins.
Ayrton, Acton Smece	Chas. Gwillim Jones.
Baldwyn, John Lewis	Henry Robert Eustatia Wright.
Banister, E. Charles	Bury Hutchinson.
Bannister, Geo., the younger	George Basham.
Batt, Wm. Forster	Francis M ^c Donnell.
Battye, Thomas Hud- son	Thomas Metcalfe.
Bell, James	Edward Banister.
Berkeley, Comyns Rowland	James Baldwin.
Bickerstaff, John	Thomas Davis.
Birt, Jacob	Jas. Gilbert George.
Blomley, John	John Battye.
Bollard, James Rich- ard	Joshua Battye.
Boys, John Harvey	James Neville.
Brettell, Janns John	Henry Comyns Berkeley and Cha Berkeley.
Brockbank, John the younger	Robert Bickerstaff.
Chanter, John Ro- berts	Thomas Clarke.
Clarke, John Callow	Thomas Ferrand Dearden.
Corpe, George	John Armstrong.
Danby, John William	John Bollard.
Davidson, Madgwick Spicer	James Robertshaw.
Dunning, Simon	John Boys.
	Robert Henry Saw- yer.
	Thomas Ramsthorpe.
	Charles Roberts.
	John Clarke.
	Robert Henry Saw- yer.
	Langley Bracken- bury.
	Jackson Gunnis.
	Alfred Estlin, Wil- liam Ody Hare, Simon George Lit- tle, and Robert Bicknell.
	Charles Millett.

Candidates' Names.

Eastlake, Geo. Shute
Elgie, Charles Wil-
liam

Elliot, Benjamin Val-
lack

Evans, John
Forbes, David Er-
skine

Freeman, John
Fry, Peter Samuel
Gale, Wm. Burch

Garfit, Frederick

Garland, John
Gaskell, William
Gibson, Richard
Gleadall, Charles, the
younger
Grover, Montague

Harrison, John

Harrison, T. Barwise
Henshall, John

Hill, Thomas
Hill, James
Hindle, John
Humbert, George

Humphrys, Harry
Ion, John Watling
Jackson, Edmund
Jackson, Richard.

James, Joseph Green

Jennings, Edward

Johnson, Thomas
Edward

Jones, John
Keary, William, the
younger
Kingsford, James
Lamotte, John La-
gier
Latimer, Sturman

Lethbridge, John
Christopher
Linay, Carter
Lord, John

Lovegrove, John

Matthews, John

*Attorneys to whom
articled.*

William Eastlake.
John Henry Howard.
Geo. Thomas Elgie.
Robert Metcalf.
Richard Jago Squire.

David Williams.
Jackson Walton.

William Battye.
Henry William Bull.
Edward Erskine Tus-
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William Harrison.
William Barnard
Heaton.

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Michael Stocks.

John Thomas Gro-
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Francis James Rida-
dall.

John Penfield Har-
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Michael Walker.
Thomas R. Weeton.
Oswald Milne, sen.

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John Philpot, the
elder.

Henry Charles Chil-
ton.

Nathaniel Charles
Milne.
William Oliver Jack-
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William Finch.
George Marshall.

Henry Kingsford.
Sinckler Porter.

George James Dun-
can.

John Lawrens Bick-
nell.

John Smetham.
Joseph Higginbot-
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George Worrall
Counsel.

Alfred Southby Crow-
dy.

Candidates' Names.

Millington, John
Mutlow, William
Palling, George
Parson, John
Partridge, Frederick
Robert

Paterson, Edward

Payne, Joseph
Postlethwaite, Ed-
ward

Potter, John

Potts, Charles Wil-
liam

Pullen, Henry

Radcliffe, Charles
Henry
Robinson, George
Lockett

Sadler, John
Srandrett, William
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Scudamore, Charles

Senhouse, William
Ponsonby.

Shapland, John Ter-
rell

Shepherd, Charles
Simons, William
Smale, Wm. Adder-
ley

Stockdale, James
Sowerby.

Sutcliffe, George

Symons, John

Taylor, William
Moseley

Tolver, Antony
Turner, Charles
Turner, Sayers

Walker, Henry
Pinckney

Wall, William John
Ward, Francis Ri-
dout

Weatherhead, Sam.
Were, Nicholas

Whitley, Henry Con-
stantine

Woodward, John
Harry Jonathan

*Attorneys to whom
articled.*

Robert Williams.
James Collins.
Charles Avery Moore.
William Ogle Hunt.
Charles Goodwin.
Lloyd Salisbury Bax-
endale.

John Mills.
Henry Hill.

William Payne.
John Armitstead.

James Sheffield
Brooks.

Charles Potts.

James Box.
Philip Mathews Chit-
ty.

Timothy Goodman.
Samuel Foot.

James Bagnall Ast-
bury.

Will. Williams.
Campbell Wright
Hobson.

John Hammond.
John Hughes.

Henry Atkinson
Wildes.

William Rudd.
Richard Baynes Arm-
strong.

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John Finch.

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John Nicholson.

William Ferguson

Holroyde.

John Nuttall.

Martin Forster.

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Samuel Tolver.

John Rhodes Clough.

Robert John Turner.

Thomas Borrett.

Edgar Taylor.

John Wayman.

Harry Wayman.

John William Wall.

Jeremiah Osborne.

Francis Butterfield.

John Edmonds.

George Prideaux.

John James.

Peter Bruce Turner.

George White.

<i>Candidates' Names.</i>	<i>Attorneys to whom articled.</i>
Yewens, Wm. Cape Brice	Thomas Chubb. Robert Few.
Zachary, Francis Daniel	John Bury.

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December, 1837.

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Nov. 17.

Bowker, Frederick, Winchester. Dec. 15.

Chambers, John, Sheffield, York. Nov. 17.

Faithfull, George Lockton, Tring, Hertford.
Dec. 15.

Franklyn, William Norris, Barnet, Hertford.
Dec. 12.

Green, Bernard Hartley, Manchester. Nov.
24.

Jessop, Michael, Alfreton, Derby. Dec. 1.

Millington, John, Carnarvon. Dec. 5.

Sincox, Edward Walford, Birmingham. De-
cember 15.

Sperling, James Moss, Halstead, Essex. De-
cember 8.

Tidcombe, James, Shepton Mallett, Somerset.
Dec. 1.

Titchener, Edward, Chichester, Sussex. De-
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Dec. 15.

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Dec. 5.

Clayton, John, and Henry Eaton, Lancaster
Place, Strand, Attorneys and Solicitors.
Nov. 21.

Raymond, H. A., and Robert Still, Lincoln's
Inn, Attorneys and Solicitors. Dec. 22.

Wayte, Samuel S., and Samuel Alford, Bris-
tol, Attorneys and Solicitors. Dec. 22.

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Bisset, William Alfred, Manchester, Silk Manu-
facturer. Dec. 1.

Brunt, Isaac, Leek, Stafford, Button Manufacturer.
Dec. 5.

Ford, John, jun., Porto Bello, Willinshall, Wol-
verhampton, Stafford. Dec. 5.

Giles, Francis, Port Street, Spitalfields, Silk Ma-
nufacturer. Dec. 1.

Green, John, and George Eley, Birmingham, and
Thiaves Inn, Holborn, Wholesale Jewellers
and Silversmiths. Dec. 8.

Mackintosh, William, Liverpool, Victualler. Nov.
21.

Seals, John, Nottingham, Lace Manufacturer.
Dec. 22.

Thomas, Benjamin, Grove Street, Lisson Grove,
Cowkeeper and Dairyman. Nov. 24.

Waters, Edward, Caerleon, Monmouth, Scrivener
and Tanner. Dec. 12.

BANKRUPTS.

From Nov. 17, to Dec. 22, 1837, both inclusive, with dates when gasetted.

- Attwood, Joseph, Newtown, Rowley Regis, Stafford, Chain Manufacturer, and Gun Barrell Borer. *Swain & Co.*, Frederick's Place, Old Jewry: *Roberts & Co.*, Stourbridge. Dec. 1.
- Anderson, Samuel, Wigmore Street, Cavendish Square, Merchant. *Pennell*, Off. Ass.; *Roy & Co.*, Liverpool Street, Bishopsgate Street. Dec. 8.
- Bales, Edward Seagar, Treacher's Place, Wandsworth Road, Surrey, Omnibus and Cab Proprietor, and Livery Stable Keeper. *Pennell*, Off. Ass.; *Ashurst & Co.*, Cheapside. Nov. 17.
- Barber, Ralph, sen., Ralph Barber, jun., and George Barber, Southwark Bridge Road, Surrey, Hat Manufacturers. *Goldmit*, Off. Ass.; *Bankart*, Clement's Lane, Lombard Street. Nov. 17.
- Bolton, John, Leeds, York, Machine Maker. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Dunning & Co.*, Leeds. Nov. 17.
- Brown, William, Liverpool, Cotton Dealer. *Avi-syn & Co.*, Liverpool; *Adlington & Co.*, Bedford Row. Nov. 17.
- Bunn, Thomas, Great Yarmouth, Norfolk, and of Southtown, Suffolk, Corn Dealer. *Palmer*, Great Yarmouth; *Bartram & Co.*, Old Broad Street. Nov. 17.
- Boast, David, London Road, Surrey, Chymist and Druggist. *Belcher*, Off. Ass.; *Temple & Co.*, Furnivals Inn. Nov. 21.
- Balsdon, Samuel, South Molton Street, Tailor. *Gibson*, Off. Ass.; *Haines*, jun., Staple Inn. Nov. 21.
- Burnell, William, Wortley, Leeds, York, Cloth Manufacturer. *Hardwick & Co.*, Cateaton Street. Nov. 21.
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- Borwick, John William, Munster Street, Regent's Park, Corn Dealer. *Belcher*, Off. Ass.; *Burt*, Essex Street, Strand. Dec. 8.
- Bennett, Thomas Hale, Cheltenham, Gloucester, Timber Merchant and Builder. *King*, Verulam Buildings, Gray's Inn. Dec. 12.
- Birka, Alfred, Manchester. Linen Draper. *Johnson & Co.*, Temple: *Hitchcock*, Manchester. Dec. 12.
- Burgess, William Edward, Llanelly, Carmarthen, Draper. *Mansfield*, Swansea. Dec. 12.
- Barton, Mary, and James Barton, Stockport, Chester, Cotton Spinners and Manufacturers of Cotton Goods. *Ross*, Symond's Inn, Chancery Lane: *Parsons*, Liverpool. Dec. 15.
- Bird, William, Cambridge, Innkeeper. *Bradley*, Cambridge: *Robinson*, Half Moon Street, Piccadilly. Dec. 19.
- Creed, William, Shepton Mallett, Somerset, Grocer. *Biggs*, Southampton Buildings, Chancery Lane: *Biggs*, Bristol. Nov. 17.
- Clark, John Robert, Carlton, Roystone, York, Grocer. *Keir*, Barsnley: *Butterfield*, Gray's Inn. Nov. 24.
- Clarke, Edward, Leamington Priors, Warwick, Builder. *Messrs. Barfoot*, Temple: *Poole & Co.*, Leamington Priors. Nov. 24.
- Coates, William, Nicholas Lane, Lombard Street, and of Upper John Street, Islington, Bill Broker. *Gibson*, Off. Ass.; *Temple & Co.*, Furnival's Inn. Nov. 28.
- Charlwood, Joseph, Birmingham, Hop Merchant. *Whitehouse* Quality Court, Chancery Lane; *Rowkinson*, Birmingham; *Harrison*, Birmingham. Dec. 5.
- Cooper, Jacob Bradley, Harleston, Suffolk, Coal, Hop, Corn, and Hay Merchant. *Hawkins & Co.* New Boswell Court: *Golding & Co.*, Walsham-le-Willows: *Hayward*, Needham Market. Dec. 5.
- Clarke, James, Claremont Place, North Brixton, Surrey, and of the Long Annuity Office, Bank of England, Stock Broker and Share Agent. *Johnson*, Off. As.: *Phillips & Co.*, Sire Lane. Dec. 8.
- Cook, George, Faversham, Kent, Grocer and Cheesemonger. *Graham*, Off. Ass.: *Child*, St. Swithin's Lane, Lombard Street. Dec. 15.
- Conway, Henry, Liverpool, General Merchant. *Blackstock* and *Co.*, Temple: *Grace*, Liverpool. Dec. 15.
- Clarke, John, and Thomas Parry, Manchester, Drysalers. *Makinson & Co.*, Temple: *Athinson & Co.*, Manchester. Dec. 19.
- Clements, John, Barnet Street, Bethnal Green, Carpenter and Undertaker. *Edwards*, Off. Ass.: *Jennings & Co.*, Whitechapel Road. Dec. 22.
- Clark, John, Keyingham, York, Corn Factor and Lime Merchant. *Rasser* and *Co.*, Gray's Inn Place: *England & Co.*, Hull. Dec. 22.
- Dale, John, Wisbech St. Peter's, Ely, Cambridge, Woollen Draper. *Metcalfe*, jun., Wisbech: *Messrs. Baster*, Lincoln's Inn Fields. Nov. 17.
- Driver, James, Cambridge, Hatter and Furrier. *Coe* and *Co.*, Pancras Lane: *Eden*, jun., Cambridge. Nov. 21.
- Darby, John, Wilton Mews, Grosvenor Place, Middlesex, Builder. *Belcher*, Off. Ass.; *Wingfield*, Great Marlborough Street. Nov. 28.
- Dawson, John, Wortley, Leeds, York, Cloth Manufacturer. *Edwards & Co.*, Great James's Street, Bedford Row: *Booth*, Leeds. Nov. 28.
- Davies, David, Sydney, Gloucester, Coal Master and Timber Merchant. *Blower & Co.*, Lincoln's Inn Fields: *James & Co.*, Newnham. Dec. 15.
- Elliott, Thomas, Gateshead, Durham, Grocer and Tea Dealer. *Meggison & Co.*, King's Road, Bedford Row: *Stanton*, Newcastle-upon-Tyne. Dec. 1.
- Exley, Matthew, Bromsgrove, Worcester, Mercer and Draper. *Robeson & Co.*, Bromsgrove: *Gregory & Co.*, Clement's Inn. Dec. 5.
- Epps, William, Margate, Kent, Butcher. *Kirk*, Symond's Inn, Chancery Lane: *De Lassar*, Canterbury. Dec. 19.

- Eaton, Richard Augustus, Lutley Mill, Worcester, Miller. *Swain & Co.*, Frederick's Place, Old Jewry; *Roberts & Co.*, Stourbridge. Dec. 22.
- Fullwood, Benjamin, Somerset Place, Hoxton, Middlesex, Annatto Manufacturer; late of Suffolk Cottage, Hackney Road, Manufacturing Chemist. *Green*, Off. Ass.: *Swan*, Great Knight Rider Street, Doctors' Commons. Nov. 21.
- Ferguson, John, Hanging Heaton, Dewsbury, York, Manufacturer. *Scholes & Co.*, Dewsbury: *Battye & Co.*, Chancery Lane. Nov. 21.
- Flower, Thomas, Condnit Street, Bond Street, Jeweller. *Pennell*, Off. Ass.: *Boydell*, Devonshire Street, Queen's Square. Nov. 28.
- Fryzer, Samuel, Tewkesbury, Gloucester, Brick Maker. *Bell*, Bedford Row: *Spruile*, Tewkesbury. Nov. 28.
- Froom, Henry, West Teignmouth, Devon, Grocer. *Rhodes & Co.*, Chancery Lane: *Drake*, Exeter. Dec. 1.
- Freeman, Richard, Crescent, Wisbeach St. Peter's, Ely, Cambridge, Builder. *Hincks*, Wisbeach: *Haslam & Co.*, Cophall Court. Dec. 5.
- Fricker, Charles, Brighton, Grocer and Tea Dealer. *Green*, Off. Ass.: *Catlin*, Ely Place. Dec. 12.
- Gaunt, Thomas, Upper Smith Street, Northampton Square, Goswell Road, Gentleman; formerly of Pembrey, Carmarthen, Iron Master and Coal Fitter. *Belcher*, Off. Ass.: *Willis & Co.*, Tokenhouse Yard. Nov. 17.
- Godfrey, Henry, Leamington Priors, Warwick, Chemist and Druggist. *Richards & Co.*, Lincoln's Inn Fields: *Russell*, Leamington Priors. Nov. 21.
- Griffiths, William, Great Malvern, Worcester, Draper & Grocer. *Bedford*, Calthorpe Street: *Bedford & Co.*, Worcester. Dec. 5.
- Gapper, Charles, Bruton, Somerset, Currier. Messrs. *Burfoot*, Temple; *Balch*, North Brewham, Somerset. Dec. 12.
- Hirst, Joseph, Gomersall, York, Wool Merchant. *Matkinson & Co.*, Temple; *Foden*, Leeds, Nov. 17.
- Hadnutt, William, William Street, Lambeth Marsh, Carpenter and Builder. *Green*, Off. Ass.: *Harpur*, Kennington Cross. Nov. 24.
- Hailes, Nathaniel, Piccadilly, Bookseller. *Clark*, Off. Ass.: *Thompson & Co.*, Great James Street, Bedford Row. Nov. 28.
- Howard, Thomas James, Buckingham Place, Fitzroy Square, Victualler. *Johnson*, Off. Ass.: *Willoughby*, Clifford's Inn. Nov. 28.
- Howarth, John, Diamond House, Cheetham Street, Wardleworth, Rochdale, Lancaster, Druggist and Drysalter. *Johnson & Co.*, Temple; *Lord*, Rochdale. Nov. 28.
- Hodges, Archelans, of Bristol, Stationer; and also of Barnstaple, Devon, Paper Maker. *Clarke & Co.*, Lincoln's Inn Fields; *Savory & Co.*, Bristol. Dec. 1.
- Harrison, Parker John, jun., King's Place, Commercial Road, Stationer. *Gibson*, Off. Ass.: *Wiley & Co.*, Bank Chambers, Lothbury. Dec. 8.
- Hardesty, George, Sheffield, York, Table Knife Manufacturer. *Rodgers*, Devonshire Street, Bishopsgate Street; *Ryalls*, Sheffield. Dec. 12.
- Hughes, Peter, Edge Hill, near Liverpool, Brewer and Spirit Merchant. *Ross*, Symond's Inn, Chancery Lane; *Parsons*, Liverpool. Dec. 15.
- Higgins, Thomas, jun., Gloucester, Watchmaker and Silversmith. *Jones*, Crosby Square; *Smallridge*, Gloucester. Dec. 19.
- Hughes, John Richardson, Oxford, Vendor of Cigars. *Philpot & Co.*, Southampton Street, Bloomsbury; *Rackstraw*, Oxford. Dec. 19.
- Hartland, James, Gloucester, Brick and Tile Maker. *White & Co.*, Bedford Row: *Bevan & Co.*, Bristol. Dec. 22.
- Johnson, David, Birmingham, Druggist, Grocer, and Hop Merchant. *Gem & Co.*, Lincoln's Inn Fields; *Danks*, Birmingham. Nov. 24.
- Jones, Henry, Hanley, Stoke-upon Trent, Stafford, China Manufacturer. *Litchfield & Co.*, Chancery Lane; *Brown*, Hanley. Dec. 5.
- Johnson, Christian, Glamford Briggs, Lincoln, Innkeeper. *Nicholson & Co.*, Brigg, Lincolnshire; *Dymley & Co.*, Field Court, Gray's Inn. Dec. 12.
- Jopling, Joseph, Newcastle-upon-Tyne, Linen Draper. *Broderick & Co.*, Bow Church Yard; *Stokes*, Newcastle-upon-Tyne. Dec. 19.
- Jones, Frederick, Ventnor, Newchurch, Isle of Wight, Southampton, Apothecary, Chemist, and Druggist. *Mackey*, Southampton; *Hughes*, Lincoln's Inn Fields. Dec. 19.
- Kett, Edward Rogers, Oxford, Chemist and Druggist. *Matthews*, Oxford; *Holmes*, Great James Street, Bedford Row. Dec. 15.
- Kinch, Maxwell, and Robert Kinch, Manchester, Warehousemen. *Matkinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Dec. 22.
- Lander, George, Leamington Priors, Warwick, Upholsterer. *Lampray & Co.*, Warwick and Leamington; *Taylor & Co.*, Bedford Row. Dec. 5.
- Law, James Bogie, Bow Lane, Cheapside, Warehouseman. *Lachington*, Off. Ass.; *Godlard*, Wood Street, Cheapside. Dec. 8.
- Longdon, George King, Cheltenham, Gloucester, Stone Mason. *Gyde*, Cheltenham; *Blower & Co.*, Lincoln's Inn Fields. Dec. 8.
- Lupton, William Ewell, Surrey, Innkeeper. *Clark*, Off. Ass.; *Martineau & Co.*, Carey Street. Dec. 15.
- Lee, William, Bristol, Stock and Share Broker. *Addington & Co.*, Bedford Row; *Hampson & Co.*, Manchester; *Bevan & Co.*, Bristol. Dec. 9.
- Le Comte, Edward, Bryanstone Street, Portman Square, Watchmaker. *Pennell*, Off. Ass.; *Gresham*, Castle Street, Holborn. Dec. 22.
- Mopsey, Henry, Oxford Street, Ironmonger. *Belcher*, Off. Ass.; *Smith*, Chancery Lane. Dec. 5.
- Mitchell, Jesse, Portsmouth, Southampton, Mercer and Draper. *Lambert & Co.*, Raymond Buildings, Grays Inn; *Hoskins*, Gosport and Portsmouth. Dec. 5.
- Mitchell, James, Yeovil, Somerset, Baker. *Lucas*, Bloomsbury Square; *Slade*, Yeovil. Dec. 5.
- Moginie, Daniel, Saint Mary at Hill, London, Spice Merchant. *Goldmid*, Off. Ass.; *Bolton*, Austin Friars. Dec. 12.
- Mease, Thomas, Stokesley, York, Flax Spinner. *Sowerby*, Stokesley; *Williamson & Co.*, Verulam Buildings, Gray's Inn. Dec. 19.
- Murphy, Richard Donovan, Liverpool, Wine and Spirit Merchant. *Bradshaw & Co.*, Liverpool; *Holme & Co.*, New Inn. Nov. 21.
- Moore, John, Leather Lane, Holborn, Builder. *Abbott*, Off. Ass.; *Badham & Co.*, Verulam Buildings. Nov. 24.
- Mallet, William, Lawrence Lane, Cheapside, Warehouseman. *Gibson*, Off. Ass.; *Fry & Co.*, Cheapside. Nov. 24.
- Marriott, Charles Jond, Leamington Priors, Warwick, Grocer. *Butterfield*, Gray's Inn Square; *Venow*, Leamington Priors. Nov. 24.

- Maunder, Joseph, and Joseph Drew, jun., of Weymouth and Melcombe Regis, Dorset, Grocers & Confectioners. *Bridges & Co.*, Red Lion Square; *Arden*, Weymouth. Dec. 1.
- Nathan, John Soesman, Bristol and Cheltenham, Furniture Broker. *Braham*, New Inn, Strand. Nov. 17.
- Norris, Edward, Manchester, Cotton Spinner. *Hampson*, Manchester; *Addington & Co.*, Bedford Row. Dec. 1.
- North, John Britty, Taunton, Somerset, Wine Merchant. *James & Co.*, Basinghall Street; *Terrell*, Exeter. Dec. 15.
- New, Henry, Blakedown, Kidderminster, Worcester, Iron Manufacturer. *Parnell*, Clifford's Inn; *Goode & Co.*, Dudley. Dec. 19.
- Oram, Benjamin, Blackman Street, Southwark, Chemist and Druggist. *Clark*, Off. Ass.; *Rhodes & Co.*, Chancery Lane. Nov. 17.
- Osborn, John, Upper Montague Street, Montague Square, Horse Dealer. *Lackington*, Off. Ass.; *Carlon*, Chancery Lane. Nov. 21.
- O'Hara, Owen, Frith Street, Soho, Butcher, Poulterer, Cheesemonger, and Importer of Eggs. *Green*, Off. Ass.; *Moresby*, South Square, Gray's Inn. Dec. 19.
- Pett, James, Hampstead, Middlesex, Carpenter and Builder. *Johnson*, Off. Ass.; *Cutten & Co.*, Ironmonger Lane. Dec. 1.
- Pegg, Thomas, Leicester, Grocer. *Clark*, Old Broad Street; *Hames*, Leicester. Dec. 1.
- Parry, Thomas, Manchester, Drysalter. *Addington & Co.*, Bedford Row; *Law*, Manchester. Dec. 8.
- Price, John, George Morgan, and Henry William Rollason, Birmingham, Glass Manufacturers. *Phillips & Co.*, Size Lane; *Messrs. Whaley*, Birmingham; or *Stubbs & Co.*, Birmingham. Dec. 8.
- Polack, Saloman Lipman, and Rudolph Lipman Polack, Manchester, Merchants. *Denison & Co.*, Manchester; *Walmesley & Co.*, Chancery Lane. Dec. 19.
- Price, John, Birmingham, Glass Manufacturer. *Phillips & Co.*, Size Lane; *Whaley*, Birmingham; or *Stubbs & Co.*, Birmingham. Nov. 17.
- Pettifor, William, Nottingham, Common Carrier. *Buttery*, Nottingham; *Wolston*, Farnival's Inn. 21.
- Parsons, John William Arnold, Wigmore Street, Cavendish Square, Hosier and Glover. *Goldsmid*, Off. Ass.; *Sarel*, Berkeley Square. Nov. 24.
- Palfrey, Richard, Wardour Street, Oxford Street, Fringe Manufacturer. *Goldsmid*, Off. Ass.; *Meredith*, Heathcote Street, Mecklenburgh Square. Nov. 28.
- Pitt, William, Kidderminster, Worcester, Grocer and Druggist. *Dangerfield*, Lincoln's Inn Fields. *Brinton*, Kidderminster. Nov. 24.
- Partridge, Joseph, Long Annuity Office, Bank of England, and of Myddleton Street, Clerkenwell, Stock Broker. *Whitmore*, Off. Ass.; *Wilde & Co.*, College Hill. Dec. 22.
- Ring, John, Chewstoke, Somerset, Ochre Manufacturer. *Peters*, Bristol; *Jones*, Crosby Square. Nov. 17.
- Roberts, Phylbert Hamlin, Exeter, Broker. *Gidley & Co.*, Exeter; *Messrs. Burfoot*, Temple. Nov. 21.
- Rawlin, Joshua, Sheffield, York, Slater and Builder. *Rodgers*, Devonshire Square, Bishopsgate Street; *Unwin*, Sheffield. Dec. 8.
- Richardson, Christopher, Limehouse, Middlesex, Timber Merchant. *Gibson*, Off. Ass.; *Lang*, Fenchurch Street. Dec. 15.
- Raynham, William, Theobald's Road, Stationer and Bookseller. *Lackington*, Off. Ass.; *Bruton & Co.*, Bedford Row. Dec. 19.
- Snelling, George, jun., Worthing, Sussex, Grocer. *Johnson*, Off. Ass.; *King & Co.*, Queen Street, Cheapside. Nov. 17.
- Sowden, William, Joseph Sowden, and Samuel Sowden, jun., Hipperholme-cum-Brighouse, Halifax, York, and Jonas Sowden, of Halifax, York, carrying on business at Bailiff, York, as Worsted Spinners. *Riddale & Co.*, Gray's Inn Square; *Stansfield & Co.*, Halifax. Nov. 17.
- Stokes, Thomas, Clevedon, Somerset, Innholder. *White & Co.*, Bedford Row; *Shurt*, Bristol. Nov. 21.
- Shuckburgh, Henry, Bristol, Grocer and Tea Dealer. *Hicks & Co.*, Bartlett's Buildings; *Hinton*, Bristol. Nov. 21.
- Slinger, John, Liverpool, Wine Merchant. *Chester*, Staple Inn; *Hinde*, Liverpool. Nov. 24.
- Sharman, Robert Smith, late of Mincing Lane. Wholesale Grocer, but now of the Tower, Commission Agent. *Clark*, Off. Ass.; *White-lock*, Aldermanbury. Nov. 28.
- Shouls, Richard Macdonald, Cullum Street, London, Plumber and Glazier. *Green*, Off. Ass.; *Hillcary*, Lime Street. Nov. 28.
- Shephard, William, of Greengate in Salford, Lancashire, carrying on business as a Manufacturer of Bichromate of Potash; and also at Old Millgate, Manchester, as a Leather Seller. *Bower & Co.*, Chancery Lane; *Barratt*, jun., Manchester. Nov. 28.
- Simpson, Joseph, Bawdeswell, Norfolk, Grocer. *Jay*, Norwich; *Helme*, Raymond Buildings, Gray's Inn. Nov. 28.
- Sayers, Christopher, Great Yarmouth, Norfolk, Money Scrivener. *Holt*, Great Yarmouth; *Swain & Co.*, Frederick's Place, Old Jewry. Nov. 28.
- Scott, William, Lime Street, London, Wine Merchant. *Lackington*, Off. Ass.; *Garrard*, Suffolk Street, Pall Mall. Dec. 1.
- Scatlbury, John, David Street, York Street, New Road, near Paddington, Middlesex, Carpenter and Builder. *Green*, Off. Ass.; *Thompson & Co.*, Great James Street, Bedford Row. Dec. 5.
- Simcock, Thomas, and James Slater, Little Ryder Street, Saint James's Street, Tailors. *Goldsmid*, Off. Ass.; *Duncan*, Lincoln's Inn Fields. Dec. 5.
- Starie, William, Cutler Street, Houndsditch, London, Builder. *Pennell*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Dec. 8.
- Stephenson, Joseph, Mortimer Street, Saint Mary le-Bone, Plumber and Builder. *Johnson*, Off. Ass.; *Turner*, Clifford's Inn. Dec. 12.
- Scott, John, Newcastle-upon-Tyne, Fruiterer and Corn Merchant. *Bell & Co.*, Bow Church Yard; *Young*, or *Dees*, Newcastle-upon-Tyne. Dec. 15.
- Stear, John, Oxford Street, Hosier. *Johnson*, Off. Ass.; *Cook & Co.*, New Inn. Dec. 22.
- Smith, Samuel, Pedmore, Worcester, Farmer. *Jenkins & Co.*, New Inn; *Gravebrook & Co.*, Stourbridge. Dec. 22.
- Stubbs, William Morley, Knaresborough, York, Scrivener. *Hawkins & Co.*, Boswell Court, Lincoln's Inn; *Powell*, Knaresborough. Dec. 22.
- Speight, Henry, Allerton, Bradford, York, Stuff

- Manufacturer and Shopkeeper. *Butterfield*, Gray's Inn Square; *Lister*, Cleckheaton, near Leeds. Dec. 22.
- Townsend, Thomas, Trowbridge, Wilts, Innkeeper. *Dax & Co.*, Lincoln's Inn Fields; *Rodney*, Trowbridge. Nov. 28.
- Thorne, Thomas, Tothill Street, Westminster, Cheesemonger. *Graham*, Off. Ass.; *Jones*, Crosby, Square, Bishopsgate Street. Dec. 1.
- Turner, Charles, Leamington Priors, Warwick, Lodging-house Keeper. *Parker*, Saint Paul's Church Yard; *Empson*, Leamington. Dec. 5.
- Tovey, Joseph, Church Lench, Worcester, Corn Dealer. *Bousfield*, Guildhall Buildings; *Cheek*, Evesham. Dec. 8.
- Turner, Joseph, Manthorpe cum Little Gonerby, Grantham, Lincoln, Woolbuyer. *Maltham*, Grantham; *Williamson & Co.*, Verulam Buildings, Gray's Inn. Dec. 15.
- Underwood, Thomas, Birmingham, Stationer and Lithographic Printer. *Holms & Co.*, New Inn; *Parker & Co.*, Birmingham. Dec. 8.
- Wallis, Benjamin, and Robert Wallis, Blackwall, Middlesex, Ship Builders. *Gibson*, Off. Ass.; *Newbon*, Great Carter Lane, Doctor's Commons. Nov. 17.
- Willmot, Robert Duncan, Liverpool, Merchant. *Taylor & Co.*, Bedford Row; *Loundes & Co.*, Liverpool. Nov. 21.
- Webster, Joseph H., Lowestoft, Suffolk, Linen Draper. *Sherrington*, Great Yarmouth; *Rhodes & Co.*, Chancery Lane. Nov. 21.
- Wonfor, William, Chesterton, Cambridge, Innkeeper. *Foster*, jun., Cambridge; *Foster*, Serjeant's Inn. Nov. 24.
- Worwick, Benjamin, Clayton, Manchester, Victualler. *Barrett & Co.*, Manchester. Nov. 28.
- Wootton, John, Blandford Forum, Dorset, Coach Maker. *Fincham*, Blandford Forum; *Stone*, Chancery Lane. Nov. 28.
- Welch, Wm., Birmingham, Victualler. *Gatty & Co.*, Red Lion Square; *Cresswell*, Birmingham. Dec. 1.
- Woodliff, Mary, Pontypool, Monmouth, Victualler. *White & Co.*, Bedford Row; *Bevan & Co.*, Bristol. Dec. 1.
- Woolley, Hardy, Moulton, Lincoln, Grocer and Draper. *Temple & Co.*, Furnival's Inn. Dec. 1.
- Woods, Thomas, and John Dowden, Portsmouth, Hants, Cabinet Makers and Upholsterers. *Abbott*, Off. Ass.; *Rush*, Austin Friars. Dec. 5.
- Woodhouse, Samuel Bentley, Nottingham, Lace Manufacturer. *Percy & Co.*, Nottingham; *Austin & Co.*, Raymond Buildings, Gray's Inn. Dec. 5.
- Wyatt, Thomas, Oxford, Baker. *Matthews*, Oxford; *Holmes*, Great James Street, Bedford Row. Dec. 5.
- Walker, William Beaver, Drury Lane, Victualler. *Goldsmid*, Off. Ass.; *Martineau & Co.*, Carey Street. Dec. 8.
- Wilson, James, sen., William Newton, James Wilson, jun., Henry Newton, and George Wilson, of Derby, Colour Manufacturers. *Capes & Co.*, Bedford Row; *Flewker*, Derby. Dec. 8.
- Westwood, John, Wolverhampton, Stafford, Steel-yard Maker and Edge Tool Maker. *Richards & Co.*, Lincoln's Inn Fields; *Foster*, Wolverhampton. Dec. 8.
- Wilson, James, sen., and James Wilson, jun., Nottingham, Hosiers. *Percy & Co.*, Nottingham; *Austen & Co.*, Raymond Buildings, Gray's Inn. Dec. 12.
- White, John George, Liverpool, Merchant. *Chester*, Staple Inn; *Davenport*, Liverpool. Dec. 12.
- Williams, George, Union Court, Broad Street Irish Provision Broker. *Graham*, Off. Ass.; *Billing*, King Street, Cheapside. Dec. 15.
- Wythes, Thomas, Northfield, Worcester, Coal Merchant. *Young & Co.*, Essex Street; *Robeson*, Droitwich. Dec. 15.
- Wakeman, Wm. Shenstone, Stafford, Wharfinger. *Austen & Co.*, Raymond Buildings, Gray's Inn; *Arnold & Co.*, Birmingham. Dec. 15.
- Wheelwright, Frederick, Birmingham, Retail Brewer and Shopkeeper. *Harrison*, Birmingham; *Chaplin*, Gray's Inn Square. Dec. 19.
- Waters, Thomas, Pillgwenilly, Saint Woolos, Monmouth, Hay and Corn Dealer. *Phelps & Co.*, Newport, Monmouth; *Richards & Co.*, Lincoln's Inn Fields. Dec. 19.
- Yates, Joseph, Flixton and of Irlam, Manchester, Lancaster, Dyewood Grinder, Chipper and Rasper. *Hampson*, Manchester; *Addington & Co.*, Bedford Row. Nov. 21.

PRICES OF STOCKS.

Tuesday, December 26th, 1837.

Bank Stock, div. 8 per Cent.	- - -	203½ a 3
3 per Cent. reduced	-	90½ a 1 a 90½ a 1½ a 1½
3½ per Cent. Annuities, 1818	- - -	99½ a 1
3½ per Cent. Reduced Annuities	98½ a 1 a 1 a 7½	a 1½ a 1½
New 3½ per Cent. Annuities	- - -	100 a 99½
Long Annuities	- - - - -	14½ a 1½
Annuities for 30 years	- - - - -	14 9-16
India Bonds 4 per Cent.	- - -	26s. a 24s. pm.
South Sea Old Ann, div. 3 per Cent.	- -	89½
Bank Stock for Acct.—Jan. 18	204 a 1 a 3½ a 4	
3 per Cent. Cons. for opening Jan. 18	92½ a 1½ a 2½ a 2 a 1½ a 2	
India Stock for Jan. 18	- - - - -	266 a 4½
Exchequer Bills, 1000l.	- - -	45s. a 47s. pm.
Ditto	500l.	- - - 45s. a 47s. pm.
Ditto	Small	- 47s. a 48s. a 46s. pm.

The Legal Observer.

SATURDAY, JANUARY 6, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HONAT.

THE PROPERTY QUALIFICATION OF MEMBERS OF PARLIAMENT.

By the present law, members of parliament for counties situate in England and Ireland, must have a freehold estate of 600*l.* a-year. for their own lives, and members for boroughs in these parts of the United Kingdom, must have a freehold estate of 300*l.* a-year for their own lives. In Scotland no qualification in estate is necessary.

A law may become as obsolete by alteration of times and circumstances, as if it were actually repealed; and we are inclined to think that the act of Queen Anne for enforcing this qualification is in this state. It is proper, we think on the whole, that members of parliament should have a property qualification, (although we do not believe that the absence of this test in Scotland has occasioned the return of needy adventurers for that part of the country.) but we conceive that common sense now teaches us, that we should not insist on this qualification being exclusively of a freehold nature. It certainly seems absurd that a man may have copyhold, or leasehold, or personal property of any value or amount, and yet be unqualified, and that a man with a rent charge of the requisite amount, issuing out of freeholds, shall be qualified. We conceive that no good reason can be given for this distinction at the present time. We are glad therefore that a bill has been brought in to alter this anomalous and inconvenient state of the law, and we shall lay the enacting clauses before our readers, calling their attention to that part of them which we have placed in *Italic* as more particularly applying to them:

1. That from and after the *passing of this act*, no person shall be capable to sit or vote as a member of the House of Commons, for

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any county, riding, part or division of a county, city, borough or cinque port, within that part of Great Britain called England, the dominion of Wales, the town of Berwick-upon-Tweed, and Ireland, unless he shall be seised or entitled, for his own use and benefit, of and to an estate or interest, legal or equitable, in lands, tenements or hereditaments, of any tenure whatever, situate, lying or being within the United Kingdom of Great Britain and Ireland, or in the rents and profits thereof, for his own life at the least, or for any term of years either absolute or determinable on his own life, of which term not less than years shall be for the time being to come and unexpired, such estate or interest being of the clear yearly value of not less than 300*l.*, over and above all charges and encumbrances affecting the same; or unless he shall be possessed or entitled, for his own use and benefit, at law or in equity, for his own life at the least, or for any term of years either absolute or determinable on his own life, of which term not less than years shall be for the time being to come and unexpired, of or to personal estate or effects of any nature or kind whatsoever, or wheresoever situate, or the interest, dividends or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends or annual proceeds, being of the clear yearly value of not less than 300*l.*, over and above all charges and encumbrances affecting the same; or unless he shall be seised, possessed or entitled, at law or in equity, in fee-simple, or as tenant in tail in possession, and not in remainder or reversion, or for his own absolute use and benefit, of or to such lands, tenements or hereditaments as aforesaid, or any undivided share thereof, or of or to such personal estate or effects as aforesaid; such lands, tenements or hereditaments, or undivided share thereof, or such personal estate or effects, being of such value, over and above all charges and encumbrances affecting the same, as would, according to the first table of the schedule annexed to an act of parliament made and passed in the thirty-sixth year of the reign of his Majesty King George the Third, intituled, "An Act for repealing certain Duties on

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Legacies and Shares of Personal Estates, and for granting other Duties thereon in certain cases," be sufficient to purchase an annuity for the life of such person, of the clear yearly value of not less than 300*l.*; or *unless he shall be engaged in or carrying on the profession of an advocate, barrister, conveyancer, attorney, solicitor, physician or surgeon, or engaged in her Majesty's service in the army or navy, or be a fellow not in holy orders of a college, and shall derive from such profession or service or fellowship an annual income of not less than 300*l.*, over and above all charges and encumbrances affecting the same; or unless he shall possess more than one of the several kinds of qualifications hereinbefore mentioned, the several qualifications so possessed being jointly of sufficient value to qualify a person as a member to serve in parliament for any county or borough, according to the provisions herein contained, although each of such qualifications may, according to the same provisions, be separately insufficient for that purpose; and if any person who shall be elected or returned to serve in any parliament for any county, riding, part or division of a county, city, borough or cinque port as aforesaid, shall not at the time of such election and return be qualified in manner above mentioned, such election and return shall be void: Provided always, that nothing in this act contained shall extend to make the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified by this act to serve as knight of a shire, incapable of being elected and returned, and of sitting and voting as a member of the House of Commons in any parliament: Provided also, that nothing in this act contained shall extend to either of the Universities in that part of Great Britain called England, or to the University of Trinity College, Dublin in Ireland; but that they and each of them may elect and return members to represent them in parliament, notwithstanding such members or any of them may not, at the time of their election and return, possess any such qualification as is herein required; anything herein contained to the contrary notwithstanding.*

That every candidate at any election of a member or members to serve in parliament for any county, riding, part or division of a county, city, borough or cinque port as aforesaid, shall, upon a reasonable request made to him at the time of such election, or at any time before the day named in the writ of summons for the meeting of parliament, by or on behalf of any candidate at such election, or by any two or more persons having a right to vote at such election, make a declaration to the purport or effect following; (that is to say)

"I, *A. B.*, do solemnly and sincerely declare, that I am, to the best of my belief, duly qualified to sit and vote as a member of the House of Commons, according to the true intent and meaning of the act passed in the first year of the reign of Queen Victoria, intituled, "An Act to amend the Laws relating to the Qualification of Members to sit in Parliament."

And the election and return of any person who, upon such request as aforesaid, shall wilfully refuse or neglect to make the said declaration, shall be void.

That the said declaration shall be made before the returning officer at any election, or a commissioner for that purpose lawfully appointed, or any justice of the peace within the United Kingdom of Great Britain and Ireland; and the said returning officer, commissioner, or justice of the peace, before whom the said declaration shall be made, is hereby required to certify the making thereof unto the High Court of Chancery, or to the Court of Queen's Bench, within three months after the making of the same, under the penalty of forfeiting the sum of 100*l.*; to wit, one moiety thereof to the Queen, and the other moiety thereof to such person or persons as will sue for the same, to be recovered, with full costs of suit, by action of debt or information, in any of her Majesty's Courts of Record at Westminster; and it is hereby enacted, that no fee or reward shall be taken for administering any such declaration, or making, receiving or filing the certificate thereof, except one shilling for administering the declaration, and two shillings for making the certificate, and two shillings for receiving and filing the same, under the penalty of 20*l.*, to be recovered and divided as aforesaid.

THE NEW WILLS ACT.

We have to remind our readers that the New Wills Act, (1 Victoria, c. 26,) came into operation on the first day of the present month. We now repeat the summary of the chief objects of the act, given by Mr. Stewart in his edition. "1. The former acts relating to wills are repealed. 2. All property whatever, real or personal, contingent or vested, may be devised, including rights of entry and real estate acquired by the testator after the execution of his will. 3. No will made by a person under twenty-one shall be valid. 4. One settled rule as to the execution of all wills is established. 5. The necessity of the publication of a will is done away. 6. A settlement of the rules which relate to the credibility of the witnesses of a will. 7. The prescribing what shall be a revocation of a will. 8. The rendering the law uniform as to the time when a will shall speak. 9. The settling certain doubtful points in the construction of wills."

We think it right to add, that although there have been many larger and more ambitious editions of this important act, we prefer Mr. Stewart's, as briefly and clearly pointing out its bearing on practice.

PRACTICAL POINTS OF GENERAL INTEREST.

MASTER AND SERVANT.

We have already stated the law on several points connected with the title of master and servant. As to the character which a master may give a servant, 1 L. O. 133; as to dismissing a servant, 3 L. O. 206; as to the master's liability for the acts of a servant, 9 L. O. 486; as to who are menial servants, 10 L. O. 279, 385; and as to servant's wages, 10 L. O. 247. We now add the following case, which decides the question whether domestic servants are within the statute 6 G. 3, c. 25:—

Lord Denman, C. J., in giving judgment said, "This was an action for false imprisonment. Lord Abinger nonsuited on the opening of the case by plaintiff's counsel, from which it appeared that she, being an infant, complained of the defendant, a justice of the peace, for convicting her under 6 G. 3, c. 25, s. 3, for not performing her contract with a master to whom she had hired herself as a domestic servant. A new trial was moved for, and the rule granted, on the ground that to this class of servants the act did not apply; and secondly, supposing it to apply, the plaintiff's infancy was said to prevent her from entering into a contract of service. We find it unnecessary to give any opinion on the question of infancy, because we are clearly of opinion, on the first objection, that the defendant had no jurisdiction. The fifth of Elizabeth is not only confined to certain classes of servants, but it expressly excludes domestic servants. The eleventh negative qualification in section 4, is thus worded, "not being lawfully retained in household, or in any office with any nobleman, gentleman or others, according to the laws of this realm." If any statute in *pari materia* had been designed to do away this limitation, one should naturally expect that this would have been effected by plain words. Now the statute 6 Geo. 3, c. 25, entitled "An act for better regulating apprentices and persons working under contract," is introduced by no general preamble. The first clause applies a remedy to the evil therein recited; the injustice practised on several manufacturers of this kingdom by apprentices, who leave their service as soon as they become useful in it. The preamble of the fourth section is thus worded: "And whereas it frequently happens that artificers, calico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, and others, who contract with persons for certain terms, do leave their respective services before the terms of their contracts are fulfilled, to the great disappointment and loss of the persons with whom they so contract; for remedy whereof be it enacted, that if any artificer (followed by the same list as before), or other person, shall contract with any person or persons whatsoever for any time or times whatsoever." Large as these words undoubtedly are, when we apply

to them the ordinary rules for construing acts of parliament laid down by Mr. Dwaris, Part II, 736, 750, and acted upon in all times, but no where more clearly stated than by Lord Tenterden in *Sundiman v. Branch*, 7 B. & C. 96, we find ourselves compelled to say, that the "other persons" are not all persons whatever who enter into engagements to serve for stated periods, but persons of the same description as those before enumerated, and that the generality of the words must have been so restricted, even though domestic servants had not been excepted from the 5th Elizabeth. In the argument many cases were cited, among others, *Gray v. Cookson*, 16 East, 13; *Louthier v. Lord Rudnor*, 8 East, 113; *Hurdy v. Ryle*, 4 M. & R. 295; S. C. 9 B. & C. 603, properly, because they are connected with the subject-matter, but not now requiring particular examination, because they have no bearing on this point. We may add, that the general opinion has been in conformity with our present decision, and that the treatises have so considered it. We conclude then, that the defendant has acted without jurisdiction, and the plaintiff ought to have been permitted to prove her case. The rule for setting aside the nonsuit, and granting a new trial, must be absolute.

Rule absolute.—*Kitchen v. Shaw*, 1 N. & P. 791.

CHANGES IN THE LAW IN THE PRESENT SESSION OF PARLIAMENT.—I. VICTORIA.

No. I.

AN ACT TO REMOVE DOUBTS AS TO SUMMONING JURIES AT ADJOURNED QUARTER SESSIONS OF THE PEACE. 23rd Dec. 1837.

Juries may be summoned to attend Adjourned Quarter Sessions.—This Act not to affect 6 G. 4, c. 50.—Whereas doubts have existed as to the legality of summoning juries for the trial of prisoners at adjourned quarter sessions, and it is expedient to remove the same: Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it is and shall be lawful for the justices of the peace for any county, riding, division, or place within England and Wales, in quarter sessions assembled, and for the recorder of any city or borough at any court of quarter sessions holden in and for the same, when to such justices and recorder respectively it shall seem meet, to direct the clerk of the peace to take the necessary steps for causing juries to be summoned to attend any adjourned court of quarter sessions for the despatch of the business of such adjourned quarter sessions, in the same manner as they may be now summoned to attend any general quarter sessions; and the juries so summoned to attend any adjourned quarter sessions shall have the same duties and powers as if they had

been summoned to attend any general quarter sessions: provided always, that nothing herein contained shall be construed to affect or alter any part of an act passed in the sixth year of his late Majesty King George the Fourth, intituled *An Act for consolidating and amending the Laws relating to Jurors and Juries.*

2.—*Act may be altered, &c. this Session.*—Provided always, and be it enacted, That this act may be altered, amended, or repealed during the present session.

NO II.

AN ACT FOR THE RELIEF OF QUAKERS, MORAVIANS, AND SEPARATISTS, ELECTED TO MUNICIPAL OFFICES. 23rd Dec. 1837.

9 G. 4, c. 17.—*Instead of the Declaration required by 9 G. 4. c. 17, and 5 & 6 W. 4, c. 76, the following Declaration to be made.*—Whereas in consequence of the conscientious scruples of persons of the persuasion of the people called Quakers, of Moravians, and Separatists, the declaration prescribed by an act of the ninth year of King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments*, on accepting office in municipal corporations, operates as a practical grievance, and to a certain extent as a disfranchisement of persons under the influence of those scruples, to the manifest detriment of themselves and their fellow subjects: and whereas no mischief or inconvenience is likely to arise from affording such relief in relation to these matters, as is hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That instead of the declarations required to be subscribed in the recited act of the ninth year of King George the Fourth, and in an act of the fifth and sixth years of King William the Fourth, intituled *An Act for the Regulation of Municipal Corporations in England Wales*, respectively, every person of the persuasion of the people called Quakers, and every Moravian, and Separatists, entertaining such conscientious scruples as aforesaid, be permitted to make the following declaration on accepting office in any municipal corporation as mayor, alderman, or councillor:

Declaration.—"I, A. B., being one of the people called Quakers [or one of the persuasion of the people called Quakers, or of the United Brethren called Moravians, or of the denomination called Separatists, as the case may be], having conscientious scruples against subscribing the declaration contained in an act passed in the ninth year of the reign of King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments*, do solemnly, sincerely, and truly declare and affirm, That I

will not exercise any power or authority on influence which I may possess by virtue of the office of _____, to injure or weaken

the Protestant church as it is by law established in England, nor to disturb the said church, or the bishops and clergy of the said church, in the possession of any right or privileges to which such church, or the said bishops and clergy, may be by law entitled."

2.—*Such Declaration to be of the same Force as that in 9 G. 4, c. 17.*—And be it enacted, that such affirmation or declaration shall be of the same force and effect as if the person making it had made or subscribed the declarations aforesaid as contained in the said act of the ninth year of the reign of King George the Fourth and the fifth and sixth years of King William the Fourth respectively.

NEW BILLS IN PARLIAMENT.

LEASES AND EXCHANGES.

This is "A bill to enable tenants for life and mortgagors in possession of lands in Ireland to grant leases, and to enable tenants for life of lands in Ireland to make exchange, and for giving a summary remedy for partition in all cases as to lands in Ireland." The proposed enactments are as follow:

1. Tenants for life in possession empowered to grant leases for thirty one years at the best rent, without taking any premium for the same lease, and so as the lessee to be named in any such lease be not made disposable for waste by any express words therein contained, and so as in every such lease there be contained a condition for re entry on non payment of the rent thereby reserved, and so as every lessee do execute a counterpart of his lease, and do thereby covenant for payment of the rent thereby reserved: and that he will not assign or sub-let the premises leased or any part thereof without the previous consent in writing of the lessor.

2. Tenants for life in possession empowered to grant repairing and building leases.

3. Provided that every lease to be made under the immediately preceding clause shall take effect in possession or within one half year after the making thereof, and that upon every such lease there be reserved during the continuance thereof, and to be incident to the reversion expectant thereon, the best rent that at the time of granting thereof (considering the nature of the case) can be reasonably obtained for the lands leased, without taking any premium for the same, except that if it shall be deemed expedient, a nominal rent may be reserved during so many of the first years of the term for which the lease shall be granted, as shall be requisite to complete the buildings agreed to be erected on the lands demised, or the repair or rebuilding of the buildings standing upon the lands demised, and as is usual in such cases.

4. That the person hereby empowered to grant such building leases as aforesaid may enter into any prior agreement with any person

who shall be willing to build upon the said lands, or any part thereof, for erecting several houses or other buildings upon a plot of land to be afterwards leased out in parcels at different rents, and to apportion any entire rent which shall have been agreed to be paid for a plot of land upon the different parcels thereof in such manner as the person hereby empowered to grant such building leases as aforesaid shall think fit, so that each parcel of land may bear only its apportioned part of the entire rent, and to grant leases of the different parcels of land at the rents so apportioned accordingly; but that no rent to be fixed on any parcel of the lands shall exceed one sixth of the improved yearly value of such parcel of land when built upon.

5. But not more than ten acres of the same estate to be leased to one person, and leases to be void if buildings to be specified in lease, are not completed in ten years.

6. That no building lease to be granted under this act shall be valid, unless the same shall contain a covenant on the part of the lessee for payment of the rent (if any) to be thereby reserved, and for keeping the buildings and premises comprised therein in repair, and a condition for re entry on non payment of the rent (if any) to be thereby reserved, nor unless the person to whom any such building lease shall be granted shall execute a counterpart thereof.

7. Building leases not to be affected by invalidity of others granted under same agreement.

8. That it shall be lawful for every tenant for life in possession of any lands in Ireland to lease all or any of the mines of coal, freestone, lead, clay, sand, ironstone, and other metals, minerals or substances found, or which shall hereafter be found in or under the lands of which he shall be so tenant for life in possession, unto any person for any term not exceeding sixty one years, to take effect in possession, or within one half year after the making of such lease, together with all such powers and authorities as shall be necessary and are usually granted for enabling lessees to work mines and to manufacture and carry away the metals, minerals and substances found in the working thereof.

9. Provided that by every lease to be made under the authority of the immediately preceding clause, there be reserved during the continuance of the term of years thereby created, the best rents, tolls and reservations that can be reasonably gotten for the same; and so as every such lease be made without taking any such premium for the same; and so as in every such lease there be contained a condition for re-entry, or a power to determine the same on non-payment of the rents, tolls and reservations thereby reserved and so as every lessee do execute a counterpart of his lease, and do enter into such covenants for the working of the said mines as the person making such lease shall judge expedient, and for rendering the rents, tolls and reservations thereby made payable.

10. That all or any of the powers of leasing

hereinbefore contained may be exercised by any mortgagor in possession of any lands in Ireland, upon his giving three calendar months' previous notice in writing of his intention to grant such lease (which notice shall state the term of years proposed to be granted), and the rent proposed to be reserved by such lease) unto the mortgagee, or if there shall be more than one mortgagee, then unto both or all of such mortgagees, or if such mortgagee or any of such mortgagees shall be absent from the United Kingdom, then by leaving such notice at the last or most usual place of abode of the mortgagee or mortgagees so absent: provided always, that any mortgagee may, within the space of three calendar months next after the giving or leaving of such notice, apply by petition to her Majesty's Court of Chancery in Ireland, praying that it may be referred to a master of the said court to settle the terms upon which the proposed lease shall be granted; and it shall be referred to the master accordingly; and in that case the mortgagor shall not be at liberty to grant any lease under the powers hereinbefore contained, or any of them, except upon such terms as shall be directed by the master; and the expence of the mortgagee or mortgagees attendant upon such petition, and the reference to the master as to the granting of such lease, when taxed and allowed by the said master, shall be a lien on the mortgaged hereditaments, and be attended with the same interest as the mortgage bears, and be recoverable in like manner as the mortgage debt.

11. Mansion or family dwelling house or glebe house not to be leased.

12. Tenants for life in possession empowered, with the approbation of the Court of Chancery, to make *Exchange*.

13. That the provisions of this act, in reference to exchanges, shall apply and extend to cases in which both of the persons, parties to the exchange, are tenants for life; and in such cases the said persons may apply to the said court by one and the same petition, or by several petitions as they may think fit; and if there shall be more than one such petition, and the court shall refer the same to a master; then both of the petitions shall be referred to the same master, and the court shall have power to apportion the costs of and attendant upon such petition or petitions between or among the persons interested in the exchange, as to the court shall seem fit.

14. That when any money shall be payable to any tenant for life for equality of exchange, the money so to be received for equality of exchange shall be applied under the direction and with the approbation of the said court, to be signified by order made in the matter of the said petition, in payment of the costs of and attendant on such petition and the effecting the exchange, and all matters relating thereto, or so much of such costs as the said court shall direct, and in the discharge of any debt or other incumbrance, or such part thereof as the said court shall authorize to be paid, affecting the lands so given in exchange by the

tenant for life, or affecting other lands standing settled therewith to the same uses, intents, or purposes; or where such money shall not be so applied, then the same shall be invested, under the like direction, and with the like approbation of the said court, in the purchase of lands in Ireland, which shall be conveyed to such and the same uses, intents and purposes, as the lands given in exchange by the tenant for life did previous to such exchange stand settled or limited to, or such of them as at the time of making such conveyance shall be undetermined and capable of taking effect; and until such purchase shall be made, the said money shall be paid into the Bank of Ireland in the name and with the privity of the Accountant General of the said court, and be invested by the Accountant General in his name in the purchase of three pounds per centum consolidated, or three pounds per centum reduced bank annuities, or three pounds ten shillings per centum bank annuities, and until the bank annuities so purchased shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of such bank annuities shall be paid by order of the said court to the person who would for the time being have been entitled to the rents of the lands so hereby directed to be purchased as aforesaid in case such purchase were made.

15. Tenant for life empowered on any exchange to charge, with costs, any money payable by him for equality of exchange.

16. If tenant for life advance such costs and money, he is to have a lien on the inheritance for the same.

17. Tenants for life or for any greater estate in possession empowered to make *Partition*.

18. Every such partition to be binding upon all persons interested.

19. That when any money shall be payable by way of equality of partition to the owners of any divided share of lands allotted on any such partition, and the person entitled in possession to such divided share shall have a partial or qualified estate or interest only therein, or such owner or any of such owners shall be trustees or feoffees in trust for charitable or other purposes, or under any legal disability, and in every other case in which an effectual discharge cannot be given for the same money, such money shall be applied under the direction of the said Court, to be signified by order made in the matter of the said petition, in the like manner as the monies payable to any tenant for life by way of equality of exchange are hereby directed to be applied under the direction of the said Court.

20. Persons having partial interests or under disability empowered to charge with costs, any money payable for equality of partition.

21. If person having partial interest advance such costs and money, he is to have a lien on the inheritance.

22. Persons paying money for equality of exchange or partition, or advancing money by mortgage, to be discharged from all liability to see to its application.

23. Copy of petition for partition to be served on parties interested.

24. Notice of intended exchange or partition to be given to incumbancers.

25. That if any person upon whom a copy of any petition, or to whom notice of the intention to present any petition is hereinbefore required to be served or given, shall be of unsound mind, or under the age of twenty-one years, or under any other legal disability, or beyond the limits of the United Kingdom, and in every other case in which the said Court shall be of opinion that by reason of the person upon whom the copy of any such petition, or to whom any such notice is so required to be served or given, or residence being unknown to the petitioner, or for any other cause, such copy of petition or notice cannot be served or given in the manner hereinbefore prescribed; then the said Court shall have power to direct how such copy of petition or notice shall be served or given, in lieu of the service or notice hereinbefore required; and such substituted service or notice shall be as effectual as if the same had taken place in the manner hereinbefore prescribed: Provided also, That whenever such copy of petition or notice cannot be served or given in the manner hereinbefore prescribed, advertisements shall be inserted in the Dublin Gazette, and in such one or more newspaper or newspapers published in Ireland as the said Court shall direct, stating the fact of such petition having been presented.

26. Exchange or partition effected under order of Court to be binding on all persons interested.

27. Definition of terms in this act.

28. Act not to enable a lessee to affect the interest of his landlord.

29. Act not to confer powers withheld by instrument creating estate of tenant for life.

30. That all suits and actions now depending in any of her Majesty's Courts of Law or Equity in Dublin, for a partition of lands, shall cease, and be no longer proceeded in, if the Judges of such Courts shall think proper so to order; and that such Judges shall dispose of the costs of such actions or suits upon the matter of the petition for a partition, to be presented under this act or otherwise, as to such Judges shall seem meet.

CUSTODY OF INFANTS.

The following is Mr. Serjeant Talfourd's proposed bill "To provide for the access of parents, living apart from each other, to their children of tender age :—"

1. That when any child, being under the age of twelve years, whose parents shall be living apart from each other, shall be in the custody of one of such parents, or of any person by his or her authority, and complaint shall be made by the other of such parents of the want of proper access to such child, it shall be lawful for the Lord High Chancellor, the Master of the Rolls, the Vice Chancellor, or any Judge of either of the Courts of Law at Westminster, to hear such complaint, and either to dismiss

the same, or to make order for the access of the complainant to such child, at such times and in such manner as he shall deem right, until such child shall attain the age of twelve years; and that it shall be lawful for the Lord High Chancellor, the Master of the Rolls, the Vice Chancellor, or any Judge of either of the Courts of Law at Westminster to vary or discharge any such order.

2. That on all complaints made under this act it shall be lawful for the Lord High Chancellor, the Master of the Rolls, the Vice Chancellor, or the Judge before whom such complaint shall be preferred, to receive affidavits sworn before any Judge or Commissioner authorized to administer an oath; and that any person who shall depose falsely and corruptly in any affidavit so sworn, shall be deemed guilty of perjury, and incur the penalties thereof.

3. That all orders which shall be made by virtue of this act by the Lord High Chancellor, the Master of the Rolls, or the Vice Chancellor, shall be enforced by process of contempt of the High Court of Chancery; and that all orders so made by virtue of this act by a Judge of any Court of Law, may be made an order of such Court, and enforced by like process of such Court.

GENERAL REPORT OF THE COMMISSIONERS OF PUBLIC RECORDS.

[Concluded from p. 169.]

IV. PRINTING.

The Select Committee of the House of Commons in 1800, in that report which has so frequently been alluded to, and which has been the great guide of all the successive commissions, observes, that "the most essential of all the measures for the purpose of laying open to the public, a full knowledge of the contents of these various and extensive repositories, would be unquestionably to print some of the principal calendars and indexes, and also such of the original records hitherto unpublished as are the most important in their nature, and the most perfect in their kind."

In this opinion we have entirely coincided. We regard the press as, at once the only perfectly secure preservative of the information which the national archives contain, and the only means by which that information can be diffused beyond a very narrow circle of inquirers. We see that as long as the records remain in their present places of deposit, they are subject to so many inconvenient and repulsive circumstances, that they are not likely to be much resorted to for the purpose of historical inquiry, even by persons who live near them, during the few hours of the day in which those repositories are open. And while they are thus divided, all hope that they will be used as other historical documents are, by the comparison of one with another, must be abandoned.

If it were necessary for us to dwell upon this subject, we might point out the vast advantages which have accrued to the historical literature of the country, from the publication of Domesday Book and the Rolls of Parliament, and subsequently, of the various publications of the several record commissions. No one who has given attention to the condition of that literature, whether local, personal, or general, can have failed to observe its great progress during the present century. The sound basis of records is, at the present time, sought for by writers of almost every class; and the diplomatic art which had long languished, if indeed, it could be said to have ever flourished amongst us, has now many zealous students, and not a few professors of no mean eminence. So rapid indeed has been its progress, that some few of the earlier publications of the record commission which were recommended by the committee of 1800, and at the period of their publication, were looked upon with no little complacency, are now regarded as having been undertaken without due consideration. It should always, however, be borne in mind, that, defective as they may be, these publications led the way to the attainment of that accuracy with which they are now contrasted. No small share of these effects, is to be attributed to the skilful manner in which the record publications have been adapted to the wants of a great variety of inquirers. The general historian, the topographer, the genealogist, the ecclesiastical antiquary, the constitutional lawyer, the practiser in legal business, connected with the transfer of real estates and the title to tithes and other payments issuing out of land or its produce, have all found, amongst the publications of the record commissioners, documents which each of them would describe as the most valuable to his own particular pursuits; whilst to the general literary inquirer, they have furnished a vast store of new, important, and interesting matter. By the use which has been made of them by the various persons of the several classes mentioned above, much of the information contained in them, has found its way to readers less critical who do not think it necessary themselves, to approach the pure fountains of historical truth. Besides this, we have reason to believe that these publications have been useful as evidence respecting public and private rights, and have had the effect of precluding litigation when it was about to begin, and of bringing litigating parties to a speedy and cheap accommodation. This has been especially the case with such publications as the Nonæ Rolls, Pope Nicholas's Taxation, and King Henry the Eighth's Valor. By these works we have reason to think that litigation has often been prevented, in cases in which litigation is especially to be deprecated; and we are encouraged to hope, though the recent changes in the law may render an appeal to such kind of evidence less frequent, that still these publications will continue to possess this value, in addition to that which belongs to them as historical documents.

But one objection presents itself, to a greatly extended publication of the historical monuments in the national archives. That objection is the cost, even when the lowest possible expense is contemplated. To the means of diminishing that expense our attention has been anxiously directed; and, both by a careful selection of documents for the press, and by the greatest economy in conducting them through it, we have, in this department of our duties, anxiously endeavoured to produce the greatest amount of public benefit, at the least possible cost.

Two changes which we deem beneficial, have been made in respect of the publications:—

First, in the form. The Select Committee of 1800, had prescribed for the commission one certain form. The works were to be of "the same size as the Rolls and Journals of Parliament;" but great objection has been taken to this form as being inconvenient and cumbersome. We have printed most of our works in the octavo size, with a view to render them not only more convenient, but less expensive. They have also been accompanied with what we deem useful and instructive prefaces.

In the selection of records for publication, great changes have also been made.

We found five large and expensive works in different stages of progress; namely, the *Fœdera*, the *Valor Ecclesiasticus*, the *Parliamentary Writs*, the *Calendar to Pleadings* in the Duchy of Lancaster, and the calendar to the *Proceedings in Chancery*.

Of the *Fœdera* we intend to speak hereafter.

The Valor Ecclesiasticus of King Henry the Eighth.—The whole of this record has been printed under successive commissions, having been eighteen years in passing through the press. A sixth or supplementary volume, containing certain indexes and a few documents which were supposed to have relation to the *Valor*, was nearly completed. With this volume we issued a general introduction to the record, and a general map of the kingdom, exhibiting the diocesan divisions, by which this publication was completed.

The Parliamentary Writs.—A work intended to illustrate, by a large, and nearly complete collection of documents, the constitution and history of parliament, had been begun upon a scale of great magnificence, and on a plan which would, for its completion, have absorbed nearly the whole of the funds which the liberality of parliament could be expected to grant in aid of this branch of the operations of the commission. For this reason, it has been judged expedient to complete the printing of that volume only which was actually in the press, preserving in manuscript the succeeding volume, with a large appendix.

Ducatus Lancastriæ.—The calendar to the pleadings having been continued to the end of the reign of Elizabeth, by the publication of the third volume in 1834, the further prosecution of this work was suspended.

The Calendar to the Proceedings in Chancery.—The third volume of this work we found

nearly finished at the press. The work contains the pleadings during the reign of Elizabeth. The further progress of it was stopped.

We desire to remark, that the suspension of those calendars was directed in consequence, first, of the expensive mode in which they were being printed, and, secondly, the little interest, when compared with many other documents, of the information which they contained. We clearly see that it is often possible to abridge the matter of a record, and to produce by the press all that is valuable in the information it contains, in the form of a catalogue or a calendar; and that it is thus, and thus only, that it would be expedient to commit to the press much of the information contained in the national archives. In this opinion we concur with the Select Committee of 1800; while we can scarcely agree with it in regarding the indexes to the Patent, Close, and Charter Rolls, and those to the Inquisitions at the Tower, as having been already "fit for the press," or capable of being made so, except by a labour equivalent to the production of new calendars, made, as such calendars ought to be, for the use, not of the office, but of the public.

In the works which we found in progress, it appeared to us that one principle which had been laid down at the beginning, had been too much lost sight of, namely, that "the more ancient and valuable records were to be printed." It is not always that the most ancient documents are at the same time the most valuable; but, in respect of the English Records, it may with confidence be said, that there are none which, for the novelty, the curiosity, and the value of the information they communicate, can claim to be perpetuated and diffused by the press in preference to some which bear, at the same time, the stamp of the highest antiquity. We found several classes of records at once of high antiquity and high value, which had been left untouched by the previous Commissions; and we saw that thus an opportunity was opened to us of laying before the public, materials for history, new, varied, and important.

We proceed to report what are the works which we have committed to the press; some of which are completed, and others at present in progress.

The Pipe Rolls.—The series of these Exchequer Rolls begins at a period about forty years earlier than any series of the Chancery Inrolments. It extends through the reign of King Henry the Second, for which reign scarcely any record evidence besides these rolls has escaped the accidents to which records are exposed. There is one roll of great celebrity, which has long been regarded as the roll of the fifth year of King Stephen; but which is now known to belong to the reign of King Henry the First. This roll we have caused to be printed; and progress has been made in two other volumes of the series, under the direction of Mr. Hunter.

The Final Concords.—Some few of these are found of the latter years of the reign of King Henry the Second; but the series commences about the seventh or eighth of King

Richard the First. It is intended to print those of the reigns of Richard and John entire. One volume has already been published, and another is in progress at the press.

The Rolls of the Curia Regis.—These are believed to be the earliest consecutive series of judicial records in Europe, commencing in the sixth year of King Richard the First. Two volumes are published, and a third is now in progress.

The Chancery Rolls at the Tower.—These, which are remarkable for the great variety and curiosity of the information which they contain, are in several different series:—(1.) The Close Rolls; of these a folio volume has been published, and a second is proceeding at the press: (2.) The Patent Rolls, one volume folio: (3.) The Norman Rolls, one volume 8vo.: (4.) The Rolls of Oblates and Fines, one volume 8vo.: (5.) Excerpts from the Fine Rolls, two volumes 8vo. All these have been published. There are also in the press, belonging to the same class, volumes of the Liberate Rolls, the Charter Rolls, and the Gascon Rolls. The greater part of the contents of these volumes belongs to the reigns of John and Henry the Third.

The following have also been published:—an octavo volume of Select Rolls from the *Miscellaneous Records* at the Chapter House, containing, amongst other matters, Excerpts from the pleadings consequent on the *Dictum de Kenilworth*.

A Chancellor's Roll, of the third year of King John, in one volume 8vo.

The Proceedings and Ordinances of the Privy Council.—This work, of which five volumes have been published in 8vo., and two more are nearly completed, belongs to a more recent period of history; little having been found of documents of the class of which the work consists before the reign of King Richard the Second.

A General Introduction to Domesday's Book, containing copious indexes, and other information highly useful in the study of that record, in two volumes, 8vo.

An account of the most important records of Great Britain, in two vols. 8vo.

An Essay upon the original Authority of the King's Council, one volume 8vo.

The ancient Calendars and Inventories of the Treasury of his Majesty's Exchequer, three vols. 8vo.

There are also in the press the following works, several of which are at this time nearly ready for publication.

A territorial Survey of Lands in Wales, one vol. folio.

Inedited Documents relating to, and elucidating the History of Scotland, two vols. 8vo.

Modus tenendi Parliamentum, &c., one vol. 8vo.

Docquets of Patents of King Charles the First at Oxford, from 1642 to 1646, one vol. 8vo.

The number and intrinsic value of these publications, the learning and skill with which most of them have been conducted through

the press, and the moderate cost at which they have been produced, will, we trust, shew that we have not been inattentive to this part of our duty. But this is by no means all that we have done in laying open, by means of the press, the treasures of history in our national archives.

A folio volume, containing *Proceedings of the Board*, from June 1832 to August 1833, possesses, besides notices of those proceedings, printed copies of many records or portions of records; and various communications made at different times to the Board, with specimens of works proposed. Papers such as these, though often valuable, are not unfrequently lost and forgotten, when they have answered the temporary purpose for which they were prepared. These papers were introduced into the printed proceedings of the Commission for the purpose of preservation only, without foreseeing that they would become sufficiently numerous to form a separate volume. This will account for the impression being limited to fifty copies. Of another volume, containing documents of a similar nature, to which it is designed to annex, as an Appendix, certain selections from the miscellaneous records of the King's Remembrancer, 250 copies will be printed.

The Appendix to the present Report is designed by us to be like the Appendix to the Report of the Select Committee of 1800, not merely elucidatory of many of the subjects to which this Report refers, but a depository of much, various, and valuable information, which we have collected. To the returns made by the several officers to the circular questions, are annexed the various Reports before alluded to, made by persons in the employment of the Commission, extending and enlarging the information in the returns. Thus much information will be found respecting the records at the Chapter House, and those of the Duchy of Lancaster, and of the King's Remembrancer. A very complete analysis is given of the contents of the Red Book of the Exchequer, a book often referred to, but of which very imperfect and erroneous notions seem to have been entertained. An analysis is given of the parliamentary surveys, in the archives of the Archbishop of Canterbury at Lambeth, of the lands and possessions of the bishops and the chapters, and of the state of the benefices. To the answers given by the keepers of public libraries are added large accounts of the historical and legal manuscripts in the library of the Honourable Society of Lincoln's Inn, including those collected by Sir Matthew Hale, (to which frequent reference is made in the Report of the Select Committee in 1800), those of Mr. Serjeant Maynard, and those of various benefactors, heretofore wholly undescribed and unknown. A catalogue will also be found, more complete and correct than any which has previously been formed, of the manuscript collections in the Bodleian Library of that eminent antiquary Dodsworth; and also notices, for the use of historians, of the historical and legal manuscripts in the libraries at Cam-

bridge, not described adequately in any printed catalogue. We have also caused catalogues to be made of undescribed manuscripts in libraries at Oxford, which it is hoped may be hereafter printed by that University itself.

The Appendix to this Report will also be found to contain statements received from those corporations of England and Wales which have returned answers to the circular questions addressed to them, with a view to draw forth information concerning charters, books of proceedings, and other historical writings in their archives.

Other numerous transcripts of records have been made, with an intention of publication when the other engagements of the Commission will permit. A particular enumeration of them is not considered necessary, and the only subject under this head that remains to be noticed, is the intended publication of the *Fædera*.

The publication of a supplement to the great national work known by the name of *Rymer's Fædera*, was one of the measures recommended by the Select Committee in 1800. Many years passed before final steps could be taken to carry this recommendation into effect. When at length an editor was found, the resolution was come to of publishing, not a supplement only, but a new edition of the original work, with an incorporation of supplementary or additional matter. We found that these volumes in six large parts had been published upon this plan, bringing the work down to the reign of Edward the Third, and that a portion of the seventh part had been printed. We came early to the resolution of suspending this work. It was discovered that there had been an imperfect collation of the documents printed by Rymer with the original, when the original was easily accessible, if the collation had been performed at all; that the new matter was inconsiderable in quantity compared to the old; that no extended inquiry seemed to have been made for inedited documents, and that, in fact, the Commission was incurring a large expenditure in reprinting a work of which three editions already existed.

But though, upon due deliberation, we came to the resolution to suspend the prosecution of this work, we by no means intended to lose sight of the original design laid down by the Committee of the House of Commons. The original work being universally deemed honorable to the British nation, we made it an object of our especial care to collect documents of the same nature, which it might be presumed, the original compilers would have inserted, had they been at that time known. The office of collecting these supplementary documents was committed to the secretary; who not only caused searches to be made at home, but, with our concurrence and sanction, instituted extensive inquiries on the continent of Europe. The effect of these inquiries has been, that documents have been obtained from France, from Belgium, from Germany, and Portugal, which will form a very conspicuous part of the supplementary volumes, whenever

we shall find ourselves in a condition to carry into effect the recommendations of the Select Committee.

In the discharge of this part of his duty, the Secretary availed himself of the circumstance of being thus brought into correspondence with men possessed of historical learning on the continent, to obtain from them information respecting other writings, not strictly diplomatic which relate to the early history or literature of Great Britain or of Ireland. A large and valuable collection has been obtained of notices of manuscripts of English, Scottish, or Irish writers, or which refer to the affairs of the British Islands, to be found in libraries or archives on the continent.

Some of the information collected is already printed, in the form of Appendixes to a report on the *Fædera*, which is in a state of preparation. In that Report, the whole history of this celebrated work will be given, together with an investigation of the principles on which it was founded, and of those also by which the editors of the volumes already published by preceding Commissions appear to have been guided.

It remains to be added, that many rare and valuable works have been placed in the library of the Commission, with a view to the preparation of this supplement, and that we are disposed to hope that this foreign correspondence has been the means of awakening in some parts of the continent a spirit of historical research. The exertions made in England, especially by this Commission, have thus become more extensively known, and have thus conducted, it is hoped, to the great benefit of historical literature.

Another great national work, placed under our superintendence, remains to be noticed. In the year 1822, an address was presented to King George the Fourth by the House of Commons, representing that "the editions of the works of the *ancient Historians of Britain* were incorrect and defective, that many of their writings still remain in manuscript, and in some cases in a single copy only, and that an uniform and convenient edition of the whole, published under his Majesty's royal sanction, would be an undertaking honorable to his Majesty's reign, and conducive to the advancement of historical and constitutional knowledge," and praying that "his Majesty would give such directions as his Majesty might think fit, for a publication of a complete edition of the *ancient Historians of the Realm*." Whereupon his Majesty was graciously pleased to comply with the prayer of the address, and to direct the then existing body of Commissioners on the Public Records, to take the steps necessary for carrying his Majesty's intentions into effect.

It was known, at the time when this address was presented, that Mr. Petrie, the keeper of the records at the Tower, had devoted many years to the collection of materials for such a work, and had made considerable progress in the arrangement of them. To him, therefore, the attention of the Commissioners was

immediately directed, as the person most competent to execute the design; and he was accordingly nominated by the Board their Sub-commissioner for that purpose.

Soon after we, the Commissioners named in the Commission of the 12th of March 1831, entered on our duties, we received a letter from Viscount Melbourne, the Secretary of State for the Home Department, requiring us to continue the superintendence of this important undertaking. We found that Mr. Petrie, with the assistance of others, had been employed upon the work. At the close of the year 1831, the greater portion of the first volume had been printed; but the completion of the volume has hitherto been prevented by the state of the health of its editor, and by his extreme anxiety to make the work one which shall be honorable to your Majesty and to the nation.

But while we have had reason to regret the circumstances which have so long disappointed the expectation of the public in respect of this work, we have not thought it expedient to defer the execution of an important part of the original plan. The part to which we allude is the publication of editions of the Anglo-Saxon laws, and of the Welsh laws, more complete, and more according to the best manuscripts, than any hitherto published. These two works are now proceeding at the press, with every prospect of being speedily completed.

We have little to report concerning the publication of records of Scotland. Whatever works were in progress there, were suspended in 1831; but an order of the Board has been made, that the *Acta Dominorum Auditorum* be finished immediately; and the work is on the eve of making its appearance. An order has also been made for the completion of the first volume of the *Acts of Parliament of Scotland*; and this volume, so long delayed, and so much desired, may be expected to appear in the course of the present year. We have not found ourselves in a situation to proceed with other Scottish Records; but it is known to us that the *Abridgment of the Register of Seizins* has been proceeding in Scotland under the authority of Mr. Thomson, the deputy clerk register.

The Commissioners then state the distribution which they have made of the works published by this and the former Commissions. In this, (they say,) we have endeavoured to consult public utility. Wherever we were satisfied that a spirit of literary inquiry prevailed, evinced by the formation of public libraries or of literary institutions, and that there consequently existed a place of secure deposit, we have complied with the applications which were made to us, annexing generally the condition that the works should be accessible to every person who might desire to consult them. Even, in some instances, sets have been placed in depositories, in parts of the United Kingdom from which no applications have been received. Previously to 1831, no more than 154 sets had been distributed in the British Islands; at the close of the year 1835, the distribution at home had increased to 380 sets.

Nineteen sets have been distributed by the present Commission among the colonies and dependencies of England.

We have also thought it highly expedient to present copies to foreign states. This had not escaped the attention of former Commissioners. A few sets had been sent to the Hanoverian dominions, and to some other parts of the continent.

Seven was, however, the whole number so disposed of. The present Commission, with the sanction of the government, has enlarged the continental distribution to the extent of seventy-one sets, the greater part of which has gone to France and Germany. There have been also sent thirty-four sets to the United States of America; and we have the satisfaction to report that they have been received, everywhere, with demonstrations of gratitude and esteem.

In bringing this our first general Report to a close, we beg to submit to your Majesty that we have described what we have done, and said little of what we intend to do. With more extensive resources and enlarged powers, more might have been done by us; and we still venture to indulge the hope that further power will be given to us, by the enactment of the legislative measure to which we have referred, wherein, as it appears to us, is collected all that is requisite for "the better preservation, arrangement, and convenient use of the Public Records." Many of the works published by us are at present incomplete; but we trust that the works which we have produced, support the opinion which the nations of Europe justly entertain of the high value of the early records preserved in this country, and illustrate the ancient greatness of the English monarchy.

Dated the seventh day of February, 1837.

(Signed)

W. CANTUAR.

BROUGHAM.

W. DUNDAS.

E. LLANDAFF.

C. W. W. WYNN.

H. HOBHOUSE.

J. PARKE.

J. B. BUSHANQUET.

ROBERT HARRY INGLIS.

LOUIS HAYES PETIT.

HENRY BELLENDEN KERR.

HENRY HALLAM.

JOHN ALLEN.

EDWARD V. UTTERSON.

W. BROUGHAM.

SUPERIOR COURTS.

Equity Exchequer.

JUDGMENT DEBT.—LACHES.—PRESUMED SATISFACTION.—TRANSMISSION OF RECORDS.

A judgment for a debt was entered up and docketed in 1805; and in 1808, the debtor's real estate was sold subject to this debt, and to an anterior outstanding term, with notice thereof to the purchaser. No step was taken for more than twenty years to enforce payment of the judgment debt against the estate: Held, that the lapse of time is a bar to relief in equity, and the presumption of payment drawn therefrom is not repelled by evidence of the debtor's and his immediate vendee's want of means of paying.

The Court will admit the identity of records produced by an officer of the Court, and transmitted to him from the proper custody, although conveyed by various and unofficial persons.

This was a bill filed in 1833 by judgment creditors for enforcing payment of the judgment debt against the debtor's real estate, which was sold to a person who conveyed it to the defendants subsequently to the date of the judgment, with notice thereof. The judgment was recovered and docketed in 1805. The estate was sold in 1808 to one Madocks, who afterwards conveyed it to the defendants.

There was a suit relating to this judgment depending in the Court of Great Session in Wales, when that judicature was abolished by the 11 G. 4, and 1 W. 4, c. 70, by which it was enacted that all suits depending in equity in the Courts of Great Sessions should cease there, and be transferred with all the proceedings thereon to the Courts of Chancery or Exchequer at Westminster, as the plaintiff, or in his default, the defendant should think fit. By the 27th section it was enacted that the records in the Courts in Wales should be kept by the same persons, and in the same places, until otherwise provided for by law.

Upon the hearing of the present cause the plaintiffs' counsel offered to produce the records of the suit in the Court of Great Session, with a view to shew that proceedings were long since taken to enforce the judgment, and to make the present a supplemental suit to the former.

The counsel for the defendants objected, upon the suggestion of the Court, to the admissibility of the proposed evidence, insisting that they did not come from the proper custody.

It appeared from the answer of the plaintiffs' counsel, and from what was alleged on both sides, that the plaintiffs' solicitor in Wales obtained the records of the proceedings in the Court of Great Session from the officer who properly had the custody of them there; that he transmitted them in a parcel by coach to his agents in town, to whom they were delivered by the coach office porter, and the agents, after opening and examining the records, sent them by a clerk to the plaintiff's clerk in Court, who now exhibited them. Subsequently to the transmission of the records, an order of Court was obtained for transferring the suit, with all the proceedings thereon, to this Court.

Mr. Baron Alderson, after hearing the objection argued, said that the act for abolishing the Welsh judicature did not prescribe any mode for transferring the records from the Courts of Great Sessions to this Court or the Court of Chancery. These documents were now in the possession of an officer of this Court. The plaintiff's clerk in Court (Mr. Gatty) was an officer of the Court. They came into his possession before the date of the order of the Court for transferring the proceedings; and, notwithstanding the irregular and unsatisfactory mode of their transmission, now that there was an order of Court to transfer

them, he held it safer to admit their identity and integrity. He could not, however, allow the present suit to be a supplemental suit.

The principal points in the cause, argued by Mr. Buteler and Mr. G. Richards, for the plaintiffs; and by Sir C. Wetherell, Mr. Simpfinson, Mr. Duckworth, Mr. Girdlestone, and Mr. Bellamy, for different defendants; and the line of argument which they respectively pursued, will be understood from the following judgment, delivered after taking time for considering the points in the case.

Mr. Baron Alderson.—The two questions reserved for consideration in this case were of great importance. These questions were, whether the plaintiffs were barred by their *laches* in not suing earlier for the relief which they prayed by their bill; and whether, if they were not so barred, the Court, taking all the circumstances into consideration, ought not to presume as a fact, that the judgment on which they founded their claim had been satisfied, or direct an issue to try that as a question of fact by a jury. The circumstances were shortly these:—In 1805, the plaintiff recovered a judgment on a debt against a person of the name of Grindley. That judgment having been properly docketed became a *lien* on the real property of the debtor; but there being then, as there is still, an outstanding term, created anterior to the judgment, the plaintiff's remedy was, from the beginning, in a Court of Equity alone. Subsequently to this judgment, the real estate in question was sold to a Mr. Madocks in 1808, and by Mr. Madocks was afterwards conveyed to the defendants, and the term, before alluded to, was assigned to a trustee for the defendant's protection. It was admitted that when the sale to Madocks took place, and when the conveyance was afterwards made to the defendants, both Madocks and the defendants had notice of the judgment, and of its remaining unsatisfied. This suit was instituted in 1833, twenty-eight years after the judgment was obtained, and, with exception of the notice given in 1808 to Madocks, the plaintiffs did not appear to have done any thing in the intermediate period to enforce their rights. Much evidence had been given to show, that from the embarrassed state of Grindley and Madocks, it ought to be inferred that neither of them could have satisfied the amount of the judgment, and the plaintiffs desired it to be inferred from this that the judgment had not in fact been satisfied, but was still outstanding and unpaid. It was clear and undisputed that for twenty-eight years the plaintiffs had had the power of enforcing payment out of a sufficient fund, by a suit in equity, and that they had taken no steps for the purpose. Upon full consideration, he was of opinion they were now too late, and in coming to that conclusion, he adopted the principle laid down by Lord Camden in *Smith v. Clay*,^a which principle was adopted by Lord Alvanley in *Kerey v. Dinwoody*,^b and by Lord Brougham

^a 3 Bro. C. C. 639, n.; 8 C. Amb. 64^c.

^b 2 Ves. Jun. 87.

and the House of Lords in *Campbell v. Graham* or *Sunford*.^c If he were to apply that principle to the present case, he would be only adopting in equity the same rule, *mutatis mutandis*, which prevailed at law as to time. The rule at law was, that a bond or judgment could not be enforced if nothing were done upon it for twenty years, and no circumstances could be shown to explain the apparent *laches* of the party. By parity of reasoning then, if twenty years and more had elapsed, and nothing had been done in equity, and no circumstance could be shown to explain that neglect, it seemed to him that the party ought not to be allowed to succeed. That was the present case. Whatever might have been the circumstances on which the plaintiff relied to explain his not suing at law, or to show that the judgment was still unsatisfied, there was no reason at all for his not having proceeded in equity. For twenty years there was an estate competent to the payment of this debt, against which he could have proceeded. Could he be said to have used that reasonable diligence without which a Court of Equity would not help him? A Court of Equity, as Lord Camden said in *Smith v. Clay*, had always refused its aid to stale demands where the party has slept on his rights, and acquiesced for a great length of time. Where activity and reasonable diligence is wanting, the Court is passive: *laches* and neglect are discouraged. The same principle, as it seemed to him, governed Lord Eldon in *Cholmondeley v. Clinton*.^d There the plaintiffs were, it was said, not barred by the lapse of time from bringing their ejectment, but their right had existed complete for relief in equity for more than twenty years, and they had not pursued it. Lord Eldon held, "that though they might perhaps not be barred at law, they were barred in equity." Therefore, even if he were of opinion that the plaintiffs in this case had a remedy at law, notwithstanding this lapse of time from the judgment, the doctrine of Lord Eldon would fully warrant him in holding that the unexplained *laches* would bar the plaintiffs in this Court.

On the second point also he thought the defendants in the right. There were undoubtedly circumstances which had a tendency to show that it was not probable, that either Grindley or Madocks were ever in funds so as to pay off this debt. But he thought that after a lapse of so long a period, without any attempt to enforce it, the plaintiffs ought to show that the judgment had not been satisfied. Lord Ellenborough in *Willaine v. Gorges*,^e directed the Jury to infer payment of a debt from lapse of time, as the presumption was not rebutted by other evidence. The inference from lapse of time should, as much as possible, be treated as founded on a rule analogous to the statute of limitations, rather than as leading to a conclusion of mere fact. Few persons believed in

the cases of rights of way or lights, before the recent statute, that any such grants as used to be suggested in pleading ever were actually made, and yet every Judge directed juries to find that after twenty years usage,—and every jury used to find,—the fact of a grant in conformity to the usage. It was better that it should be so treated; but where very cogent evidence existed to the contrary, there were authorities which warranted a decision that a specialty debt after a lapse of twenty years might be treated as still unsatisfied. *Fladong v. Winter*^f was put as one of such cases. As a question of fact he should have drawn a conclusion different from the Master in that case, but the Master having so decided, he should have concurred with Lord Eldon in confirming that report, on the ground of the parties there refusing to try the fact at law. In *Wynne v. Waring*,^g the evidence amounted to demonstration. Here that was not so. The unexplained fact of no attempt to fix the land with the debt was the strongest fact in the whole case to warrant the Court to say that the judgment was satisfied; and it appeared to him infinitely stronger than the fact of the embarrassments of Grindley and Madocks. The bill must be dismissed with costs.

Greenfell v. Girulstone and others.—At Gray's Inn Hall, Dec. 2d, 4th, 5th, and 15th, 1837.

Queen's Bench.

[Before the Four Judges.]

STEAM BOATS.—LOCAL ACT.

Steam boats plying on the Thames are not within the 7 & 8 Geo. 4, c. 75 (local act), and the bye laws made by the court of aldermen under that act, do not apply to them.

This cause came before the Court in the form of a special case. The plaintiff was the master of the *Star*, a Gravesend steam boat. The defendant was a magistrate of the counties of Middlesex and Kent, and on the 19th of September, 1834, he issued his warrant, which recited that Tisdall had been convicted before him of a certain offence, punishable under the bye laws of the corporation of London, for having navigated the *Star* steam boat between London bridge and the eastern limit of Limehouse at a greater rate than five miles an hour, and the warrant then directed a distress to be made upon the goods of the person convicted for the penalty thus incurred. The bye law made by the lord mayor and aldermen directed that no steam boat or vessel should navigate between these two places at a greater speed than five miles an hour, and that a master of such steam boat or vessel offending therein should forfeit the sum of 5*l*. The bye law in question purported to be made under the authority of the 7 & 8 Geo 4, c. 74, s. 57.

Mr. Cleasby, for the plaintiff.—The bye law

^c 2 Clark & F. 429.

^d 2 Jac. & Walker, 191.

^e 1 Camp. 217.

^f 19 Ves. 196.

^g Stated in *Fladong v. Winter*.

is made without authority. In the first place, the act in question, which is not a public act, professes only to be "An act for the better regulation of watermen and lightermen on the Thames between Yantlet Creek and Windsor." By its very title, therefore, it cannot be made applicable to vessels of this sort. The section is in the following terms: "That it shall be lawful for the court of mayor and aldermen, from time to time, to make and set down, in writing, such rules and bye laws as they shall think proper for the government and regulation of the freemen of the said (watermen's) company, and their widows and apprentices, and the boats, vessels, or other craft, to be rowed or worked within the limits of this act, and to annex reasonable penalties for the breach of such rules and bye laws, not exceeding the sum of 5*l.* for any one offence." As the act gives the mayor and aldermen a power to inflict penalties, it must receive a strict interpretation. Steam boats were well known when this act was passed; and, if the legislature had meant to include them, they would have been named in the act. They are not named, and the description of the vessels that are to be subject to these bye laws—vessels to be "rowed and worked,"—shews that they are not intended. In *Sandiman v. Breach*,^a Lord Tenterden, in delivering the judgment of the Court, stated the rule of construction in these cases to be: That "where general words follow particular ones, the rule is to construe them as applicable to persons and things, *ejusdem generis*." In *Casher v. Holmes*,^b the principle thus stated was adopted and applied. There an act passed for keeping in repair a harbor, imposed certain duties, enumerated in a schedule annexed, on goods exported and imported. In the schedule, under the head "metals," certain specified duties were imposed on copper, brass, pewter, and tin, "and on all other metals not enumerated." This Court held that the latter words did not include gold and silver; and Mr Justice Little-dale said, "I have no doubt that these words do not include gold and silver, but refer to metals, *ejusdem generis* with others previously named." [Mr. Justice Cresswell.—Can you say that watermen are not on board of steamers.] No; but the act of parliament speaks of vessels rowed or worked, and under the management of watermen,—a description that by no means includes steam boats. The 39 & 40th sections illustrate this point, for they speak of vessels carrying goods without passengers, and direct that the names of the owners shall be painted on the "lighters." The act has in fact received an exposition from one of the Judges. The 50th section makes it necessary for these bye laws to be allowed by one or more of the Judges. An application for an allowance of these bye laws was made to Lord Chief Justice Tindal, who, after hearing counsel, refused to allow the law, asking why steam boats were not referred to in the act if they were meant to

be included in it. This allowance was afterwards made by Mr. Justice Vaughan, before whom, however, no discussion took place, and his Lordship's attention was never directed to any objection to the authority of the corporation to make the law. Under these circumstances, it is submitted that the bye law is bad, that the warrant on it cannot be supported, and that there must be judgment for the plaintiff.

No one appeared to argue for the defendant.

Per Curiam.—There must be judgment for the plaintiff.—*Tisdale v. Combe, Esq.* M. T. 1837. Q. B. F. J.

Exchequer of Pleas.

48 Geo. 3. c. 123.—COGNOVIT.

*When a defendant has given a cognovit for 55*l.* debt and costs, the original debt being under 20*l.*, he is entitled to his discharge under the 48 Geo. 3. c. 123.*

Heaton applied for the discharge of the defendant out of custody, under the 48 Geo. 3. c. 123; but

Humfrey opposed the application. It appeared that the original debt was under 20*l.*, but the defendant had given a *cognovit* for debt and costs, amounting to 55*l.* *Robinson v. Sandall*, 6 Moore, 287, and — *v. White*, 1 D. P. C. 19, were now cited, where it had been held that a defendant was not entitled to be discharged under such circumstances, when he had given a warrant of attorney. The words of the act were, "all persons in execution for any debt or damages not exceeding the sum of 20*l.*, exclusive of costs," &c., which meant the costs in that action. It was difficult to distinguish between cases of warrant of attorney, and *cognovits*.

Parke, B.—A warrant of attorney is to confess judgment for debt and costs in another suit; but where a party who is sued gives a *cognovit*, it is the debt and costs of that suit, and then the costs are within the meaning of the act.

The rest of the Court concurred.

Rule absolute. *Rathbone v. Fowler*, M. T. 1837. Exch.

AFFIDAVIT.—BAIL.

*A defendant being alleged, in an affidavit to hold to bail, to be indebted to the plaintiff in 20*l.* principal money of a bill, "drawn and accepted by the defendant," it is sufficient.*

Couching moved for a rule to shew cause, why the writ of *capias*, issued in this action, should not be set aside, and why the defendant should not be discharged out of custody, on the ground of an irregularity in the affidavit to hold to bail. The affidavit alleged that the defendant was indebted to the plaintiff in 20*l.* for principal money on a bill of exchange, "drawn and accepted by the defendant for

^a 7 Barn. & Cress. 96.

^b 2 Barn. & Ad. 592.

20*l.*, payable to the defendant at a certain day now passed," &c. The objection was, that it was not alleged, who was the drawer of the bill, or that it was drawn on the defendant; and it was urged that the bill might have been originally drawn on some one else, but subsequently accepted by the defendant.

Parke, B.—I think there cannot be any mistake.

Rule refused. *Harris v. Rigby*, M. T. 1837. Exch.

JUDGMENT ON DEMURRER.—TAXATION.

Where a judgment on demurrer has been obtained, and no copy of the bill of costs and affidavits of increase has been delivered to the opposite party at the time of service of notice of taxation, within the rule of M. T. 1 W. 4, that is not a ground for setting aside judgment and execution, the case not coming within the rules, but the costs may be re-taxed.

Miller had obtained a rule nisi for setting aside the taxation of costs and final judgment and execution in this case, on the ground of irregularity. The plaintiff, it appeared, had obtained judgment on demurrer and had given notice to tax the costs, but had not delivered a bill of costs, as required by the rule of this court of M. T. 1 W. 4. The case of *Wilson v. Parkins*, 5 D. P. C. 461, had been referred to, where the rule was held to be imperative, unless the opposite party had waived his right.

Humfrey now shewed cause, and contended that a judgment on demurrer was not within the rule. Its terms were, "That one day's notice of the time of taxing costs, upon rules, orders, town *postea*s, and inquisitions, and a copy of the bill of costs and affidavits of increase, if any, shall be given, and delivered by the attorney or attorneys of the party or parties whose costs are to be taxed, to the attorney of the other party or parties in the same action, at the time of service of such notice, and that in country causes, in cases of *postea*s and inquisitions, the notice shall be given two days, and the affidavit delivered two days before such taxation." The judgment in the present case was neither upon rule, order, *postea*, or inquisition, and *Wilson v. Parkins* did not apply, as that was judgment on a *postea*.

Miller, contra, submitted that this case was within the spirit of the rule, if not within its precise words.

Lord Abinger, C. B., said, that it was evident that the case was not within the meaning of the rule; but even if it were, there was no ground for setting aside the judgment. The parties might go again before the Master, to see if the costs were excessive.

Parke, B., said, that the omission to comply with the rule was no reason for setting aside judgment and execution, but the costs might be re-taxed.

Rule accordingly. *Taylor v. Murray*, M. T. 1837. Excheq.

CHANCERY SITTINGS,

Hilary Term, 1838.

Lord Chancellor.

AT WESTMINSTER.

Thursday	Jan. 11	{ Appeal Moions and Appeals.
Friday	.. 12	{ Petitions.
Saturday	.. 13	{ Appeals and Causes.
Monday	.. 15	
Tuesday	.. 16	
Wednesday	.. 17	
Thursday	.. 18	{ Appeal Motions and Causes.
Friday	.. 19	{ Appeals and Causes.
Saturday	.. 20	
Monday	.. 22	
Tuesday	.. 23	
Wednesday	.. 24	{ Appeal Motions and Causes.
Thursday	.. 25	
Friday	.. 26	
Saturday	.. 27	
Monday	.. 29	{ Appeals and Causes.
Tuesday	.. 30	{ Appeal Motions and Causes.
Wednesday	.. 31	

Vice Chancellor.

AT WESTMINSTER.

Thursday	Jan. 11	Motions.
Friday	.. 12	Petition-day.
Saturday	.. 13	{ Pleas, Demurrers, Exceptions, Causes and Further Directions.
Monday	.. 15	
Tuesday	.. 16	
Wednesday	.. 17	
Thursday	.. 18	Motions.
Friday	.. 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 20	
Monday	.. 22	
Tuesday	.. 23	
Wednesday	.. 24	{ Motions.
Thursday	.. 25	
Friday	.. 26	
Saturday	.. 27	
Monday	.. 29	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	.. 30	{ Motions.
Wednesday	.. 31	

On every Friday the Vice Chancellor will hear short Causes and unopposed Petitions, previous to the General Paper.

Rolls.

AT WESTMINSTER.

Thursday	Jan. 11	Motions.
Friday	.. 12	Petitions in General Paper.
Saturday	.. 13	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday	.. 15	
Tuesday	.. 16	
Wednesday	.. 17	
Thursday	.. 18	Motions.
Friday	.. 19	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	.. 20	
Monday	.. 22	
Tuesday	.. 23	
Wednesday	.. 24	

Thursday ..	25	Motions.
Friday ..	26	{ Pleas, Demurrers, Causes,
Saturday ..	27	{ Further Directions, and
Monday ..	29	{ Exceptions.
Tuesday ..	30	Petitions in General Paper.
Wednesday ..	31	Motions.

AT THE ROLLS.

Thursday .Feb. 1	{ Short Causes, after swearing in Solicitors.
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Causes, Further Directions, and Petitions, by Consent, every Tuesday, at the Sitting of the Court.

COMMON LAW SITTINGS, In and after Hilary Term, 1838.

Queen's Bench. In Term.

MIDDLESEX.	LONDON.
Friday	Jan. 12
Tuesday	16
Monday	29 Tuesday
	Jan. 30

After Term.

Thursday	Feb. 1 Friday
	Feb. 2

The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long causes will probably be postponed from the 12th and 16th of January to the 1st of February: and all other causes on the lists for the 12th and 16th of January, will be taken from day to day until they are tried.

Undefended causes only will be taken on January 29th.

Defended as well as undefended causes, entered for the Sitting on January 30th, will be tried on that day if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Common Pleas. In Term.

MIDDLESEX.	LONDON.
Wednesday ..	Jan. 17 Friday
Wednesday	24 Friday
	26

After Term.

Thursday	Feb. 1 Friday
	Feb. 2

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting-days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting-days.

On Friday the 2d February, in London, no causes will be tried, but the Court will adjourn to a future day.

Exchequer. In Term.

MIDDLESEX.

First Sittings.—Saturday	Jan. 13
By Adjournment (if necessary)	
Monday, January 15th.	
Second Sittings.—Wednesday	Jan. 24
By Adjournment (if necessary)	
Thursday, Jan. 25th.	

LONDON.

First Sittings.—Friday	January 19.
Second Sittings.—Saturday ..	Jan. 27.
By Adjournment (if necessary),	
Monday	January 29.

After Term.

MIDDLESEX.	LONDON.
Thursday	Feb. 1 Friday
	Feb. 2
The Court will sit at half-past nine o'clock.	

SHERIFFS' COURTS, LONDON.

NOTICE IS HEREBY GIVEN, that the Judge of the Sheriffs' Courts, London, has appointed the under-mentioned days for the trial of issues directed to be tried before him under the provisions of the Law Amendment Act, of the 3rd and 4th William 4, cap. 42. And all writs for the trial of such issues must be left at the Sheriffs' Court Office, in Whitecross Street, four days before the day of trial.

By order of the Judge.

1838.

January	Friday 5th	Thursday 18th
February	Thursday, 1st	Friday, 16th
March	Friday, 2nd	Thursday 22nd
April	Saturday, 7th	Friday, 27th
May	Friday, 4th	Thursday, 17th
June	Friday, 1st	Thursday, 21st
July	Thursday, 12th	Friday, 27th
September ...	Friday, 21st	Thursday 27th
October	Friday, 5th	Thursday, 25th
November ...	Thursday, 15th	Wednesday, 28th
December ...	Friday, 7th	Thursday, 18th
The Court will sit at Guildhall at Eleven o'clock precisely.		

THE EDITOR'S LETTER BOX.

The Letter of "An Old Subscriber;" H. H.; and "A Partial Sufferer;" are under consideration.

"A Constant Reader's" suggestion as to the Law Lectures he mentions, cannot be complied with. We have no permission to use them, nor space, if permitted. An abridgment, such only as we have room for, would not be generally useful, and the omission of the articles suggested, would not answer the purpose, and would disappoint some of our readers. We do the best we can for the majority; our thanks, however, are due to our correspondent for the trouble he has taken.

Errata.—p. 142, for *Chevers v. Parkinson*, read *Chaffers v. Parkinson*; p. 154, Returning and filing process exclusive of fee paid, for 2s. 6d., read 1s.

In consequence of the intended arrangement with the Patentee of the Seal in the Common Law Courts being incomplete, the fee of 7d. for sealing a writ is still taken, and instead of 5s. for signing and sealing, 4s. 5d. is taken for signing only.

The Legal Observer.

SATURDAY, JANUARY 13, 1838.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

ON REVERSIONARY INTERESTS VESTED IN MARRIED WOMEN.

No rule of our law is better established than that, independent of an antenuptial settlement to the contrary, all the personal property of the wife vests in the husband by the act of the marriage. And this general rule extends to all rights and possibilities whatever, as Lord Holt says,^a "When the wife hath any right or duty which by possibility may happen to accrue during the coverture, the husband may release or discharge it." And it has been very recently decided, in conformity with the earlier authorities on the point, that the contingent reversionary interest of the wife in the trust of a term of years may be sold by the husband, and that the wife surviving will be bound by the sale, though the husband dies before the contingency is determined, or the reversion falls into possession.^b It should further be observed that by the recent act for abolishing Fines and Recoveries, 3 & 4 W. 4, c. 74, a married woman, having been privately examined according to its provisions, may by deed dispose of all her interest in lands, whether in possession, remainder, or reversion, and in money directed to be laid out in land.

Until recently this general rule was also held to apply to all interests which a married woman possessed in personal chattels, reversionary or in possession; and certainly, according to the established practice of conveyancers, the husband and wife might assign the reversionary interest of the wife in a personal chattel for a valuable consi-

deration; and large sums have been advanced on securities of this kind. However, it has been held by Sir Thomas Plumer, V. C., in the cases of *Hornsby v. Lee*,^c and *Purdew v. Jackson*,^d that a husband's assignment of a reversionary interest in a personal chattel, even for a valuable consideration, is not binding on the wife if she survives the husband. And these cases were confirmed by Lord Lyndhurst, C., in the case of *Honner v. Morton*,^e who held that where a husband and wife assign to a purchaser for valuable consideration a share of an ascertained fund, in which the wife has a vested interest in remainder, expectant on the death of a tenant for life, and both the wife and the tenant for life outlive the husband, the wife is entitled, by right of survivorship to claim the whole of that share of the fund against such particular assignee for valuable consideration.

This is therefore an anomaly in this branch of the law; and it appears difficult to see any good reason why this particular portion of a wife's property should not be included in the general rule, and why she should have full power to dispose of her reversionary interests in her real estate and terms of years, and have no power at all to dispose of her reversionary interest in her chattels personal. We are not surprised, therefore, to find that the attention of the legislature has been several times called to the point.

The Real Property Commissioners, in their First Report,^f say, "What we have proposed with respect to land, may, we think, also apply to money to be laid out in the purchase of land. Whether the power

^a 1 Salk. 326.

^b *Donne v. Hart*, 2 Russ. & M. 360; 11 L. O. 266. And see *Major v. Langley*, 2 Russ. & M. 355; 11 L. O. 267.

VOL. XV.—NO. 440.

^c 2 Madd. 16.

^d 1 Russ. 1.

^e 3 Russ. 65.

^f Page 380, as printed for this work.

which we have proposed to give a married woman over her real estate may not be extended to reversionary and contingent interests in personal estate, is a matter, although not strictly within our province, yet so nearly connected with the subject of this part of our inquiries, and one on which, from some recent decisions, so much difficulty has been felt, that we may, perhaps, without impropriety, suggest it as deserving consideration."

Mr. Tyrrell, also, in his Suggestions,^s in recommending that married women should, with their husband's concurrence, be empowered to convey their lands, says, that "it would have been desirable, if within the powers of the Commissioners, to have recommended a similar authority with respect to reversionary and contingent interests in personal property."

We also find that a correspondent has, in our eleventh volume (p. 405), pointed out the practical evils attending the present state of the law. The fact is, that the transfer of this kind of property is not now prevented; it is merely done on more disadvantageous terms, and is generally thrown into the hands of professed money lenders, instead of respectable persons.

Under all these circumstances, we are glad to find that a bill has been brought into Parliament in the present Session, by Mr. Lynch and Mr. James Stewart, to remedy the present state of the law on this subject.

It proposes (1.) that it shall be lawful for every married woman by deed to dispose of any chattels personal, and also to dispose of, disclaim, release or extinguish any interest which she alone, or she and her husband in her right may have in any chattels personal, and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any chattels personal, or in regard to any interest in chattels personal, as fully and effectually as she could do if she were a feme sole; save and except that no such disposition, release or extinguishment shall be valid and effectual, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed.

2. Provided always, that the powers of disposition given by this act shall not interfere with any power which, independently of this act, may be vested in or limited or reserved to any married woman, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this act she may be prevented from so doing in consequence of such power having been

suspended or extinguished by such disposition; but such powers of disposition shall not enable a married woman to dispose of any chattels personal, or any interest in chattels personal, when the deed, will, or other instrument, under which she may be entitled to the same shall contain a valid restriction against the anticipation thereof by such married woman.

3. That every deed to be executed by a married woman for any of the purposes of this act shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed, before a Judge of one of the superior Courts at Westminster, or a Judge of one of the superior Courts in Dublin, or one of the masters in ordinary of the Court of Chancery in England, or one of the masters in ordinary of the Court of Chancery in Ireland, or before two of the perpetual commissioners appointed or to be appointed under an act passed in the third and fourth years of the reign of his late Majesty, intituled, "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance;" or before two of the perpetual commissioners appointed or to be appointed under an act of parliament passed in the fourth and fifth years of the reign of his said late Majesty, intituled, "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance in Ireland;" or before two special commissioners to be appointed as hereinafter provided: Provided always, that when two or more married women shall concur in one and the same deed, such deed may be acknowledged by one or more of such married women in any one or more of the modes herein directed, and may be acknowledged by any other or others of such married women, in any other or others of the modes herein directed.

4. That such judge, master in chancery or commissioners as aforesaid, before he or they shall receive the acknowledgment by any married woman of any deed by which any disposition, release, or extinguishment shall be made by her under this act, shall examine her apart from her husband, touching her knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, and unless she freely and voluntarily consent to such deed, shall not permit her to acknowledge the same; and in such case such deed shall, so far as relates to the execution thereof by such married woman, be void.

5. Power of perpetual commissioners under existing acts not confined to any particular place.

6. If, from being beyond seas, &c., a married woman be prevented from making the acknowledgment, special commissioners to be appointed.

7. When a married woman shall acknowledge a deed, the person taking the acknowledgment to sign a memorandum to the effect herein mentioned.

8. Judge &c. to be entitled to same fees as under existing act.

9. Courts of Common Pleas at Westminster and in Dublin respectively, in case of a husband being lunatic, &c., may dispense with his concurrence.

THE HILARY CLUB.

Mr. OBSERVER,

I HAVE seen with much interest the letter which appeared in your publication of the 30th of December last, signed "T. COTERIE." I am probably the first person belonging to the other sex who has ever attempted to contribute to your excellent periodical, of which, however, I beg to say I have long been a constant admirer and reader—skipping some of the more abstruse portions; and I now venture to intrude upon you to bear testimony to the truth of Mr. Coterie's remarks, as to the usual style of conversation at lawyers' dinner parties; and considering that the form of a petition would be more suitable to your pages, I have endeavoured to throw the statement of my grievances into that shape.

Your's obediently,

E. T.

The humble petition of E. T., spinster.
Sheweth,

That your petitioner is in the frequent habit of visiting at the houses of gentlemen of the legal profession, residing chiefly in the neighbourhood of Russell Square.

That she confesses that she has for some time had a strong desire and intention to become permanently connected with the said profession, by intermarrying with one of its members; and that in pursuance of such desire, she has been induced to visit many families living in the aforesaid neighbourhood, which she by no means considers undesirable or ill adapted for domestic happiness.

That her feeling towards the said profession is not as yet exclusively confined to one member thereof; but that, after mature deliberation and much inquiry and personal observation on the subject, she is led to think that, on the average, lawyers make much better husbands than any other class of men.

That, entertaining these opinions, she has used her best endeavours to make herself agreeable to all the gentlemen of the said profession to whom she has had the honour of being introduced; and that she has reason to think that her efforts would

have been attended with success, except for one great difficulty.

That the gentlemen of the said profession are apparently unacquainted with any other subject than their own calling, and that they suppose that persons of the other sex are equally interested about it.

That your petitioner is entirely ignorant of law, and is quite unable to enter into any conversation respecting it.

That owing to the above circumstances, your petitioner finds that she is unable to carry her just and honourable design of intermarrying with one of the members of the said profession into execution, as she has no topic in common with the said members.

That in particular, on the 5th day of the present month she had the honour of dining, among others, in company with John Plainway, Esq., a member of your honourable Club; and that having been introduced to her for that purpose, he took her down to dinner.

That on entering the dining room, the said John Plainway having ascertained from her in the usual way whether she preferred sitting from or near the fire, seated himself next to her.

That your petitioner naturally concluded that she had a good opportunity of carrying her design into execution, having previously ascertained that the said John Plainway was well to do in the world.

That nevertheless the said John Plainway only addressed her once during the said dinner. After the fish was removed, he inquired whether it would be agreeable to your petitioner to take some wine? That your petitioner having signified her willingness so to do, he proceeded to inquire what wine she would take? That your petitioner said that she "did not care," or words to that effect; and that the said John Plainway replied, "that was no answer to his question." That your petitioner being somewhat confused, declared that she preferred "sherry." That no other conversation passed between the said John Plainway and your petitioner during dinner, which your petitioner could understand, as the said John Plainway proceeded to talk the whole time on legal matters.

That your petitioner submits that this is by no means an uncommon case; and she trusts that the same may be taken into your consideration, and such relief granted as the nature and circumstances of the case may require:

And your petitioner will ever pray.

PRACTICAL POINTS OF GENERAL INTEREST.

AGREEMENTS BY MEDICAL MEN WITH PATIENTS.

A deed obtained by a medical man, or by any professional adviser, will always be looked upon with suspicion. In *Maccube v. Hussey*, 2 D. & Cl. 440, an annuity obtained by a medical man of his patient, as we have already shown, will be set aside. See *Popham v. Brooke*, 5 Russ. 8; 5 L. O. 2. This principle has also been acted on in the following case, from which we shall extract a part of the judgment of the Vice Chancellor:

“From the time that I first heard this case stated, it appeared to me to be one of very great importance, and it is for that reason that I have anxiously attended to all that counsel could say on the subject, before I delivered my opinion. But I must say, that from the beginning it has struck me with very great surprise that any one who had the power of withdrawing such a case as this from the attention of the public, should have allowed it to be discussed in public. In my opinion however, as the case now stands, nothing can be more useless than to allow the action to proceed; for it is plain, on the face of the agreement itself, that it is not worth one farthing in point of law. Because it is an agreement between a medical adviser and his patient, which contains first of all, a stipulation that Bennett would, at all times when required, diligently and faithfully give his medical and surgical attendance to his friend, Jonathan Dent, for and during the remainder of his life. So that it is an agreement which is framed on the foundation of having the medical assistance of the defendant continued, and not on the ground that the connexion between the two, as patient and medical adviser, is to be dissolved. [*His Honor then read the remainder of the agreement.*] It is plain that the existence of such an agreement, is a direct premium to the medical adviser to accelerate that death, upon the happening of which he is to have 25,000*l.*, and it is in vain to say that, in fact, it did happen that the party who was to give the 25,000*l.*, did live four or five years after the agreement. You must look at the agreement as it stood at the time when it was made; and it must be admitted that the human mind is so constituted as that this agreement might be a temptation to some persons to do the very thing which, it is obvious, it was the duty of the party who took the agreement not to do; and my deliberate opinion is, that it is totally void in point of law, for that reason. But supposing it were not so, and that there were some doubt on the question whether the instrument were totally void at law; then how does the case stand? The person who had been the medical adviser, and who had rendered past services, which had made a great impression on the aged patient,

think it a right and fit thing, when they two were together and without the intervention of any legal adviser, and without any suggestion from the aged person as to what the quantum of remuneration should be, (except that there was some loose conversation, in which Mr. Dent once said, that 20,000*l.* might not be too much, or something to that effect,) to take from his aged patient, in consideration of his past services (for all which he had been paid) and of such services as he might thereafter render, an agreement to pay 25,000*l.* at the death of the patient. Now it would be a very meagre thing to say, that that sort of policy which has induced this Court to interfere with respect to transactions between clients and their solicitors and attorneys, should be restricted merely to those cases; because as much mischief might be produced, and as much fraud and dishonesty practised, if transactions of this kind were allowed to stand, as ever took place between any principal who placed confidence in his attorney, and the attorney; and it seems to me that, wherever you find the relation of employer and agent existing in situations in which, of necessity, much confidence must be placed by the employer in the agent, then the case arises for watchfulness, on the part of this Court, that that confidence shall not be abused; and I can hardly conceive a more glaring instance of the abuse of confidence, than the taking, by Mr. Bennett, in the manner represented in his answer, this sort of agreement from Mr. Dent.”—*Dent v. Bennett*, 7 Sim. 539.

PRESENT STATE OF THE LAW WITH REGARD TO SOLICITORS' LIENS.

THERE are few subjects of greater interest to our readers in general, or which have excited greater attention in the profession, than that which stands at the head of this article.

It may be stated as a broad principle, that all deeds and papers coming into the hands of a solicitor, to which his client has an indefeasible title, are subject to his lien for costs; and although attempts have on several occasions been made to lessen the advantages of this rule to solicitors, the Courts have for many years past, with unvarying uniformity, expressed their determination to uphold it.

The rule, however, admits of considerable modification with regard to papers in a suit actually in progress; and as the apparent variations from the general principle in this respect may be considered as settled by a recent decision of the Chancellor, it becomes important to review their nature and effects. Had the original doctrine

been adhered to, it might fairly have been assumed that papers in a suit were as much available for the purposes of lien as any documents that might come into a solicitor's possession; but in *Commerill v. Poynton*, 1 Swanst. 1, Lord Eldon introduced an exception, which has just received the sanction of the present Chancellor.

In that case, it appeared that disputes having arisen between the defendant and his solicitors during certain proceedings in the Master's Office, the latter desired their client to consider they were no longer concerned for him, and requested him to appoint some other solicitor to attend to the proceedings in the Master's Office. On receipt of this notice, the defendant submitted a motion to the Court, that the solicitors might be ordered to proceed as solicitors in the cause for him, or might deliver up to him all papers relating thereto; upon which an order was made, directing the solicitors to permit the defendant or his agents to inspect the defendant's deeds, papers, and writings in the cause, and to permit copies or extracts to be taken from them, and also to produce such deeds, papers and writings, before the Master and at the hearing of the cause; Lord Eldon on making the order, observing, "I am quite clear that no solicitor can say to a suitor, 'I have such a lien on your papers that I will neither deliver them to another solicitor, nor permit another solicitor whom you may employ to make such use of them as is necessary for proceeding with the suit.' The solicitor who has possession of the papers must allow the new solicitor to see them at all reasonable times, and must himself attend with them before the Master, or suffer the new solicitor to have them for that purpose. *A solicitor cannot by virtue of his lien prevent the King's subjects from obtaining justice.*" The principle involved in the concluding sentence no doubt weighed much with his Lordship in making his order; but in this case, it will be observed, inspection and production only were ordered. In *Colegrave v. Manley*, 1 Turn. & Russ. 400, his Lordship went a step further, and ordered the papers to be delivered up to the new solicitor, he undertaking to hold them subject to the lien of the former solicitor. The circumstances of that case may certainly be deemed peculiar, inasmuch as the first solicitor had written to his client, stating that he had assigned his business with others to another solicitor; but the same principle governed Lord Eldon's decision here as in

Commerill v. Poynton, for his Lordship said, that, so far as the use of the papers is concerned, the suitor, *when his solicitor discharges himself*, must have his business conducted with as much ease and celerity and as little expense, as if the connection of solicitor and client had not been dissolved.

In *Moir v. Mudie*, 1 Sim. & Stu. 282, the Vice Chancellor at first expressed a doubt whether he could make an order for inspection of papers without requiring the defendant to proceed to the taxation of the solicitor's bill, and his undertaking to pay it; but on subsequent consideration his Honour made the order, and stated that as the solicitor had thought fit to retire from the suit, he had no right to retard its progress.

We now come to the recent decisions. In the case of *Heslop v. Metcalf*, which arose out of a petition presented on behalf of the plaintiff for an order against his late solicitor, directing him to deliver to the plaintiff's new solicitor such papers as he might think necessary for the hearing of the cause, such new solicitor undertaking to return them within a reasonable time afterwards. The petition was first heard before his Honor the Vice Chancellor in November last, when the following facts were detailed: the suit had been commenced by the plaintiff's late solicitor, about two years before the application, and the plaintiff had made certain advances on account of it, but not to the extent required, and, disputes having arisen between them, the solicitor arrested his then client for the balance claimed by him, and refused to proceed any further in the suit until such balance was paid. The plaintiff thereupon employed a new solicitor, who applied to his predecessor, not only for an inspection, but for the use of such papers as he might require on the hearing of the cause. The inspection was allowed, but the late solicitor refused to part with any of the papers until his costs were paid. Hence the petition, and his Honor not only made the order for delivering the papers to the plaintiff's new solicitor, upon his undertaking to return them within ten days after the cause should be heard, but directed the late solicitor to pay the costs of the petition. Against this order an appeal was lodged, which was heard by Lord Cottenham on the 22d Dec. last, and dismissed with costs.

His Lordship grounded his decision principally on the case of *Colegrave v. Manley*, and observed with his usual acumen, that the right of inspection being admitted by the appellant and his counsel, the lien

could not be much more affected by the Vice Chancellor's order, as without it the new solicitor would be entitled to copy every paper in the late solicitor's possession, and it became therefore simply a question of expense to the client.

From the foregoing decisions it may be concluded, that when a solicitor *discharges his client*, he in effect destroys his *lien* upon papers in a suit in actual progress.

What will be deemed such a severance of the connection by the solicitor as to entitle a client to claim the production and use of papers in a suit, we will consider on a future occasion.

NEW BILLS IN PARLIAMENT.

MORTGAGES OF SHIPS.

This is a bill "to amend the law relating to mortgages of ships and vessels." It recites that by certain provisions of an act passed in the sixth year of the reign of his late Majesty King George the fourth, intituled, "An Act for the registering of British Vessels," mortgagees of ships were exempted from the liability of owners: and that it has been found that too great facility has in consequence been afforded to owners of ships, who have obtained credit for the repairs or outfit thereof, to raise money by way of mortgage thereon to the full value of the ship, when so repaired or outfitted, to the prejudice of the creditors who have effected or furnished the repairs or outfit, in the event of the mortgagee taking possession of such ship, or the owner thereof becoming bankrupt; and that it is expedient to provide a remedy in that behalf, and to afford to such creditors a more effectual security for their claims, in case of the ship being mortgaged after notice of such claims.

It is therefore proposed to be enacted as follows:

1. No mortgage of any ship to be valid unless thirty days notice of the transfer be given to the registering officer at the ship's port of registry.

2. No entry of the bill of sale affecting the transfer to be made in the book of registry unless such notice be given.

3. Notice of Transfer Books to be provided, in which the notices are to be entered. Copies of the notices to be sent by the registering officer at the port of registry to the commissioners of customs in London, and

to the registering officer at the port where the ship is, or of her last port of outfit.

4. Books and entries may be inspected and extracts made

5. Persons having claims for repairs, supplies or outfit, may, within the thirty days mentioned in the notice of transfer, transmit declarations of claim to the port of registry. Declaration to be made according to statute 5 & 6 W. 4, c. 62.

6. Declarations of claim to be filed in the offices of registry.

7. Indorsement to be made on the bill of sale that it is made subject to the declaration of claim.

8. Creditors having filed their declarations of claims, to have an equitable lien on the ship or share mortgaged, with priority over the mortgagee and subsequent charges.

9. Declarations of claim made on a transfer of a share or shares, only to rank equally with declarations of claim filed on occasion of a subsequent transfer of other and different shares.

10. In case the mortgagee takes possession of the ship, creditors who have filed declarations of claim may apply to the Court of Admiralty in a summary way for a warrant of arrest, or in case of sale the court to apply the proceeds according to the provisions of this act.

11. Proceedings in the Court of Admiralty not to be staid by reason of a fiat of bankruptcy issuing against the mortgagor. Rights saved of seamen for wages, and claims on bottomry and respondentia bonds.

12. Creditors entitled to a lien under this act may apply to the commissioners under the fiat for a sale, in like manner as mortgagees. In case of deficiency, such deficiency to be a debt provable under the fiat.

13. Creditors proving under the fiat not to be barred from proceeding against solvent part owners.

14. Act not to deprive creditors of their remedies against mortgagors or owners.

15. Declaration of claim may be withdrawn or delivered up on production of receipt.

16. Persons producing a false receipt guilty of a misdemeanour.

17. Acts required to be done by registering officer may be done by the collector or comptroller of customs.

18. Copies of entries to be evidence.

PATTERNS AND INVENTIONS.

This is a bill "for the better encouragement of the arts and manufactures, and securing to individuals the benefit of their inventions for a limited time." It recites that it is expedient for the greater encouragement of the arts and manufactures in these realms, that protection should be afforded to the inventors of new and useful improvements, by vesting the property thereof in them, and that the same should be still further increased, and extended to all per-

sons whatsoever who shall be desirous of availing themselves of this act.

It is therefore proposed to be enacted as follows :

1. Repeal of certain acts of 27, 29, & 34 G. 3, relative to linens. &c.
2. Property in new designs secured to inventor or proprietor for twelve calendar months.
3. Persons availing themselves of this act to deposit a fac-simile, model or specimen of their invention with commissioners to be appointed under the act.
4. Commissioners to find some suitable place for exposing models, &c. to public inspection.
5. Persons depositing models, &c. to pay 10*l*. Entitled to a certificate, sealed by commissioners.
6. Persons imitating subject-matter of license without consent of person having license, or mark "Licensed" on same, to be liable to a penalty of 50*l*. for every offence. Certificate not to exempt persons from liability for infringement of patents. Subject-matter of license not to be afterwards subject of letters patent; not to be capable of a second licence.
7. Provision that the persons who were protected by the acts hereby repealed, shall still be entitled to the benefit of the said acts, if they think fit.
8. That, for the purpose of carrying this act into execution, it shall be lawful for her Majesty, her heirs and successors, by charter and letters patent, under the Great Seal of the United Kingdom of Great Britain and Ireland to erect and establish a board of commissioners to carry this act into execution; and by commission under the Great Seal to appoint one person to be the chief of such commissioners, and two other fit and proper persons to be other commissioners of the said board, and from time to time to supply any vacancy in the number of the commissioners; and that until such vacancy shall be supplied, it shall be lawful for the surviving or remaining commissioners to act as if no such vacancy had occurred; and that the said commissioners shall hold their said offices during their good behaviour, and so long as they shall personally give their attendance upon their respective duties, and shall conduct themselves honestly and faithfully in the due execution of the duties of their said offices respectively.
9. That the said commissioners shall be styled "The Commissioners for Inventions;" and the said commissioners, or any two of them, may sit from time to time, as they may deem expedient, as a board of commissioners for carrying this act into execution; and the said commissioners acting as such board shall be and are hereby empowered, by summons under their hands and seal, to require the attendance of all such persons as they may think fit to call before them upon any question or matter connected with or relating to the administration of the several powers, questions, matters and things over which they shall have any jurisdiction or control by virtue of this act,

and to examine all such persons upon oath, and to require and enforce the production upon oath of all deeds, models, drawings, designs, books, contracts, agreements, accounts and writing, or copies thereof respectively, in anywise relating to any such question, or matter or thing, or, in lieu of requiring such oath as aforesaid, the said commissioners may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

10. To have a common seal. Rules sealed to be received as evidence.

11. The commissioners are authorized and empowered from time to time to appoint such persons as they may think fit to be a secretary or secretaries, registrar or registrars, and all such clerks, messengers and other officers as they shall deem necessary, and from time to time to remove the same, or any of them, and to appoint others in their stead. Salaries to be regulated by commissioners of Treasury.

12. Commissioners to take an oath.

13. Secretary of commissioners to receive fees, and also all other sums payable under this act, and to pay same into Bank of England once a week, to credit of commissioners. Monies in Bank, subject to orders of commissioners, or as directed by this act.

14. Salaries of officers under this act.

15. Penalty on officers taking fees.

16. Commissioners to make rules. General orders not to be valid, except sanctioned by Lord Chancellor.

17. Monies standing to account of commissioners chargeable first with compensation; secondly, with salaries of officers and expenses, and surplus to be carried over to consolidated fund.

18. Act may be altered this session.

19. Act to come into operation, as to appointment of officers, on passing; as to other matters, 1st of January 1839.

MEMOIR OF WILLIAM OWEN, Esq., Q. C.

WM. OWEN, Esq., of Glan Severn in Montgomeryshire, was born in the year 1758. He received the early part of his education in the Principality, and from thence proceeded to the University of Cambridge, where he much distinguished himself. He was admitted as a student of the society of Lincoln's Inn, and was called to the Bar on the 23d November, 1787. He practised on the Carmarthen Circuit and at the Chester Sessions. He received the appointment of Commissioner of Bankrupts, and was afterwards promoted to the rank of Attorney General, on the Carmarthen Circuit. In 1819 he was appointed King's Counsel, and Bench of Lincoln's Inn. Soon after

acquiring these honours he retired from the Bar, and went to his mansion at Glan Savern. There he devoted his time and talents to the benefit of the public, acting for many years as Chairman of the Quarter Sessions, and in that situation, as well as a local Magistrate and Deputy Lieutenant of the county, administering justice with firmness and independence, and on all occasions consulting the peace and well-being of the community.

Mr. Owen took a leading and active part in the abolition of the Local Courts in Wales, which placed Wales, as to its jurisprudence, on an equality with England,—a measure he had always much at heart, and which he had the happiness of seeing accomplished. He wrote very fully to the Common Law Commissioners on the subject of these Local Courts; and his evidence was printed in the Appendix to their first Report. It may be interesting to our readers to peruse the following extracts from his evidence; and it may be observed that nothing but the most perfect conviction of the evils attending the Local Courts could have induced him to support their abolition:—

“The Welsh judicature, (he says) in its original construction, was a convenience for the purpose of deciding such trivial or other matters as both parties chose to submit to its authority, *the English Courts being open to each party*, as they were until the 13 G. 3, c. 51; but the restrictive clauses of that act converted the Great Sessions into a Court of *exclusive* jurisdiction. This alteration, which took away the choice of four courts, and tied the Welsh plaintiff to one,—infinitely inferior to any of the other,—in violation of the articles of union, was unjust, and a monstrous privation of a Welshman's birthright.”

“I am of opinion, (he adds) that the proceedings ought to be conducted in London, and I am satisfied the expences of suits will be diminished rather than increased by their being commenced in Westminster Hall.” “I believe there are few, if any, barristers or pleaders, permanently resident in the principality, competent to draw the pleadings necessary in civil actions.” “I am clearly of opinion, that the necessity for creating and continuing the Welsh judicature has long ceased; that the same ought to be abolished, and the English Circuits extended to Wales.”

“In lieu of the valuable rights which were wrested from the Welsh, the happy alternative (he observes) was given to them

of suing in their respective Local Courts, such as I have described them to be, or of not suing at all. The latter course has frequently been preferred. Numberless grievances have been submitted to, within my knowledge (many of them under my advice) rather than encounter the perils and hazard of such Local Courts.” Such was the testimony of an eye witness, whose long experience on the subject entitles his opinion to be received with the greatest respect.

Mr. Owen was married to the widow of a clergyman, but left no children. He died at Woodside in Cheshire, on the 10th November last, in the seventy-ninth year of his age.

NEW FEES IN THE COMMON LAW OFFICES.

WE subjoin some letters on the subject of the New Fees. Whilst the scale was in course of preparation, we called the attention of our readers to some of the principal points. In consequence of Lord Abinger having introduced a bill to suspend the new act, it was supposed that the Judges had not made up their minds on the details of the measure, particularly as regarded the three different scales which were proposed, varying the fees according to the amount of the debts sought to be recovered; but at length, it seems, the Judges determined on one scale in all cases, and fixed the amount considerably higher than was expected. We presume no alteration will be made until the present plan has been tried for a sufficient time. We recommend, that at the expiration of three months a parliamentary return be applied for, and in case the receipts should considerably exceed the expenditure, the practitioners may then properly suggest to the Judges the particular *items* on which a reduction might most beneficially take place. As the compensations fall in, there will no doubt be an opportunity of effecting reductions, for it is clear that there ought to be no profit to the public revenue on the administration of justice. The principle of *abolishing all taxes on justice* has been too firmly established to be disturbed. Indeed it would be intolerable to levy any contribution on those who are unfortunately obliged to resort to the law for redress, beyond the mere necessary expense incident to the Courts and their officers.

Sir,
HAvING, shortly after the passing of the act 1 Vict. c. 30, drawn attention (through the medium of your valuable journal) to the importance of making some distinction in the fees payable on actions brought to recover "debts above 20*l*." and those under that sum, and finding in the scale of fees just published under the authority of that act, that no distinction whatever has been made, upon the grounds (as it is rumoured) that it would have been difficult, if not impossible, to distinguish for what amounts actions are brought, and also that it would have caused great confusion in the offices, I take this opportunity of pointing out the fallacy of both these objections.

With regard to the first objection, "that it would have been difficult, if not impossible, to distinguish for what amounts actions were brought," I would beg to suggest, that upon the face of all the proceedings in the cause (or upon such as were necessary to be produced at the offices) the words "debt above 20*l*," or "debt under 20*l*," (as the case might be) should have been written. Nothing could have been more simple than this, and if any argument is necessary to shew that such a plan would have answered the purpose intended, I need only refer to the practice now adopted at the Master's Office, which requires those very words to be written at the top of every bill of costs (where the action is brought for the recovery of any debt); and surely if the Masters are thus enabled to distinguish for what amounts actions are brought, and tax the costs upon that principle, the clerks at the various offices ought to be enabled to do so likewise, or if this should not be deemed sufficient security, there might have been a seal impressed upon the proceedings with those words upon it.

Now, with regard to the second objection, "that it would have caused great confusion in the offices," I would beg to ask, what could have been easier than to have kept two books, in one of which to enter all actions brought to recover "debts above 20*l*," and in the other "debts under 20*l*," and not only this, but it would have enabled Parliament and the Judges (either annually, or when required,) to have had a return made to them of the number of actions brought, *distinguishing the amounts for which each action was brought*, which would have been of the greatest importance, for reasons too numerous and obvious to particularize; and yet under the plan now adopted no such return can possibly be made.

Having thus disposed of the practical part of these objections, I will now say a few words upon the equity of them. In the first place, with regard to the public generally: should there not be some difference made between a debtor who owes a small sum of money, and one who owes a very large sum, for the sake of plaintiffs as well as defendants? and yet in this new scale of fees no difference whatever is made whether the action is brought to recover 2*l*. or 2000*l*., or any other sum. Then, secondly, with regard to the profession, why

should they be compelled to pay a fixed sum for fees in all cases, whilst they are allowed their costs upon a scale varying (and justly so) in proportion to the amount for which the action is brought to recover? and which makes a difference of about one-half in their profits.*

I could adduce many more reasons to shew that there should have been some distinction made in the new scale of fees in proportion to the amount for which the actions were brought, but I must for the present take leave of this subject, having, as I humbly submit to you and your readers, proved the fallacy of the objections raised, and that, on the contrary, the plan I suggested might have been carried into effect with ease and justice to all. At the same time purposely avoiding to comment upon the new scale of fees with regard to the general alterations made,—time only will prove its efficacy.

H. H.

Sir,

Your columns being always open to the exposition of public grievances, and more especially of those relating to the profession of which I have the honour to be a member, I would, with your permission, make them the vehicle through which I would convey to the public my own feelings, and those, as far as I can learn, of the profession at large, with respect to the new regulation as to the fees to be paid at the law offices. It was given out when the recent act relating to them was brought into parliament, that all sinecures in those offices were to be abolished, and that such offices only as were absolutely necessary, were to be retained. These brilliant promises induced me, and I think I may include many others of the profession, to expect, that the contributions from the purses of suitors, in order to keep those offices on foot, would be very much diminished, and reduced to a very small sum. Judge then of my surprise, on finding by the list of those fees which you have given in your number for 30th December, that not only nearly all of them are increased, but increased to a very great extent, and in a manner which will be most severely felt.

Look for example at writs of summons, the charge on issuing which was, under the old system, when there were two distinct offices maintained for the purpose, only 3*s*. 1*d*.; now that one office is to serve the purpose of the two, they are increased to 5*s*.; writs of execution also are increased to an equally great extent. True it is, that there are reductions in some of the charges, but those in which the reductions are made, are of such unfrequent occurrence, that it is almost immaterial whether the reductions are made or not; such for instance are striking special juries, &c. which are diminished by one half. Whether, I would

* We understand that the increased fee will be allowed in the attorney's costs, but the profit on the outlay does not appear to be fixed. Ed.

ask, would it be a greater boon to the public, that writs either on mesne process or of execution, which are of every day's use, should be diminished in a trifling degree, or that charges which are comparatively so seldom made, should be greatly cut down.

This act will, in my humble judgment, be a greater drawback to public justice than any other imposition or tax which could be devised. On the very outset of a poor man's attempting to recover or defend his rights, he will be met by these expenses which he cannot afford to pay, and he will allow his wrong-doer, however ill he may have acted, or however heinous his offence, to glory in the poor man's rights, simply because he cannot afford the expence of instituting an action. I will mention this single fact as a proof of the slovenly manner in which this act has been prepared and carried out, *viz.*, that no compensation has as yet been given to the Duke of Grafton, who holds the office of sealer of writs, and we are told by his deputy, that if we do not get our writs sealed, they will be informal and liable to be set aside for irregularity; and in the other office we are told that such is not the fact: so that we have no alternative than to add to the already enormous expence, or to suffer our proceedings to be set aside. I would submit these my statements, however feebly they may be expressed, to the consideration of the public in general, and if any sufficient reasons can be given for these severe charges, I shall be perfectly content.

G. B.

NEW TABLE OF FEES FOR SHERIFFS, &c.

Sir,

I do not perceive by either the Incorporated Law Society's copy, or the copy in the Legal Observer of the above table, what the charge is for an arrest in Middlesex, *exceeding* seven miles from the General Post Office, though I suppose that 1*l.* 1*1s.* 6*d.* is the amount intended to be inserted. Perhaps you would oblige me by stating in the next number of the Legal Observer.

F. W. D.

[As in other counties 1*l.* 1*1s.* 6*d.* is allowed where the distance exceeds seven miles, we presume the same fee will be allowed in Middlesex. Ed.]

TAXES ON SOLICITORS.

THERE is no class of persons, whether in professions or trades, who suffer so much from public taxation as solicitors—not only in their initiation, but in their progress and continuation in practice. With respect to the initiation tax, however, no objection can be urged against it, as it tends to prevent many of those who are what is termed “not regularly bred to the profession,” from entering into it as *principals*; but that which is most to be complained of (and in small practices it is vexatious, and severely felt,) is the *annual certificate tax*,

which, in some cases, takes away a tithe or more of a solicitor's profits, after deducting agency charges, postages, and other contingent expenses. Neither of the other learned professions is so taxed, and why should attorneys continue to be so? or at all events why should they not be partially relieved from it?—particularly now that the Common Law charges (and I may add those in Chancery and Bankruptcy) are so much cut down and reduced by acts of parliament and rules of court, so that a country cause, after payment of agent's bills, postages, &c. &c. is scarcely worth the notice of the solicitor, who is thereby but ill required for the trouble, responsibility, and anxiety he undergoes in the progress and issue of the suit.

The only profitable part of the profession (for in the long run there is, in country practice, as I have before mentioned, almost as much loss as gain,) is *conveyancing*, and even in this the “regularly bred” practitioner often sees, as it were, “the bread taken out of his mouth” by an illiterate uneducated neighbour, who has set himself up for “a conveyancer,” because, forsooth, he has caused himself to be entered as a member of one of the Inns of Court, and who, perhaps, has never read a single treatise on any legal subject in the whole course of his life, and knows no more of the *principles* of conveyancing than the boy who blacks his shoes. This is a great hardship, and very galling to the regularly bred practitioner, and ought to have been guarded against by the act which imposed the duty upon articulated clerks.

In the course of my small practice I have met with several instances of the bunglingness (if I may use the term) of such *would be* conveyancers. In one instance, I recollect, the *uses* were placed before the *habendum*—in another, they were omitted altogether, and but for the nominal consideration of 5*s.* (which carried the use) the deed would have been nugatory.

Why do not the profession *unanimously* petition parliament for the exoneration, or at least reduction of the certificate duty? The fact is, that to the leading London practitioners the tax is comparatively trivial in their estimation, and as the country solicitor is not called upon for immediate payment by the tax-gatherer, but it is included in the agent's bill of costs, he thinks but little about it, except, perhaps, when he cursorily turns it over when about to settle it. Whereas if he were called upon to pay it in the nature of an *assessed tax*, he would think differently of it, and bestir himself to call a meeting of his professional brethren in his own immediate district, with a view to endeavour to get themselves relieved from such an onerous tax.

D. W.

[The Inns of Court should only authorize *conveyancers under the bar* to prepare drafts or give opinions like special pleaders, not negotiate and transact business, and ingross deeds like solicitors. Ed.]

HILARY TERM EXAMINATION.

The Examiners have appointed Wednesday the 24th instant as the day of examination for persons applying to be admitted on the roll of attorneys. It is expected that the questions will be of the same scope and nature as heretofore, and the same course pursued. We have heard that some discussion has taken place amongst members of the profession on the subject of awarding distinctions or rewards to a few of the candidates who pass their examination in a superior manner; but no doubt this suggestion, if adopted, will be duly announced before it is acted upon. We believe that no material change whatever will at present take place. Whether the Examiners are disposed to undertake the additional duty (which must be an anxious one) of adjudicating the rewards or distinctions which are suggested, has not, we believe, been considered by the Board; and we are not yet aware that the profession generally desires that such a task should be imposed, even if the Examiners were willing to undertake it.

The articles of clerkship and testimonials of due service must be left, as usual, at the Law Society within the first seven days of Term,—the last of which will be Thursday, the 18th instant; but it is recommended that the documents be left without delay, in order that any defect may be duly supplied. In some cases it is requisite to apply to the Court for authority to the Examiners to proceed, notwithstanding the defect, and time should be allowed for this purpose, or for procuring further evidence.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—CHARITY TRUSTS.—LIEN.—JURISDICTION.

Several persons having joined in a petition, it is not competent for some of them, when the petition stands for judgment, to withdraw their names without consent.

Charity estates heretofore vested in a municipal corporation upon trust for purposes beneficial to all the inhabitants of the borough, may be well administered by trustees, some of whom are members of the new corporation.

Deeds relating to the charity estates were deposited by the former trustees with bankers, to secure the repayment of money. The Court has no jurisdiction on petition, without consent of the bankers, to decide upon the validity or extent of their lien.

Three petitions were presented in the matter of the Ludlow charities, one praying confirmation of the Master's report, appointing trustees of the charities, the trusts of which became vacant by the 71st section of the Municipal Reform Act, from the first of August 1836. The second petition, by adverse petitioners, prayed that the report be sent back to the Master to be reviewed. The third prayed for an order upon certain bankers to give up deeds relating to the charities, which, they alleged, were deposited with them as security for repayment of money advanced by them to the former trustees, and upon which they claimed a lien. These deeds were deposited in the Master's office without prejudice to the question of lien. This petition contained an offer to pay the bankers what was fairly and justly due to them in respect of the charities.

The first and second petitions were argued last February by Mr. Wigram and Mr. Romilly for the first, and against the second; and by Mr. Treloove, Mr. Wakefield, and Mr. Temple, *contra*. The facts and line of argument may be understood from the following judgment.

These petitions having been at the head of the paper for judgment, it was intimated to the Lord Chancellor, that some of the petitioners to the second petition, were desirous of withdrawing from it, and that an affidavit of that fact was in course of being settled by counsel.

Mr. Wakefield, for the other persons, parties to that petition, said, that three or four of the petitioners wished to withdraw the petition, but the others objected to it, and wished to have his Lordship's judgment, to which they were entitled. Co-petitioners were like co-plaintiffs, and one or two could not withdraw their names from the record without the consent of the others.

The Lord Chancellor.—They have associated together in presenting the petition, and they all persisted in it during the hearing. The Court cannot interfere now to allow some of the petitioners to withdraw it, while the others persist in it.

His Lordship then proceeded to deliver his judgment.—This was a petition by several persons, describing themselves as late members of the corporation of Ludlow, objecting to nine persons out of seventeen appointed by the Master to be trustees of the charity estates. The only objection against six being, that they were members of the present corporation, and against two more, that they were officers of that corporation. The petition prayed that it may be declared that, the corporation of Ludlow having an interest directly at variance with the interests of the charity, the members of the corporation ought not to be appointed trustees of the charity estates. The trusts of the charity are properly stated in the petition. They are, first, to support a grammar school; secondly, to make certain allowances to a certain number of poor; thirdly, to provide a preacher and assistant for the rector. There does not appear to be anything in the nature of these trusts which can create an interest in

the corporation at variance with the interests of the charity ; on the contrary, the trusts are all for the benefit of the inhabitants of the town, and as the members of the corporation, as now constituted, may well be supposed to represent the inhabitants, the interests of the corporation and the charity can hardly be supposed to be in any degree at variance, and the old corporation have been trustees of this charity, at least, from the time of the charter of Edward the Sixth. It is, however, said that the present corporation contend, that part of the property belongs to the corporation, and is applicable to corporate purposes. Whatever may have been the ground of this claim, the six members of the corporation appointed trustees by the Master being willing to accept the trusts of this property, as charity property, cannot hereafter set up any title inconsistent with such trust. Indeed, the corporate property being now wholly applicable to the public purposes of the town, the individual members of the corporation have no greater interest in contending that the property in question is corporate property than any of the inhabitants of the town ; and to exclude individual members of the corporation on this ground would be to establish a principle which might tend to the exclusion of all the inhabitants in their turn, and would probably apply to the persons proposed by the petitioners themselves. If I were to hold the objection valid, and appoint persons trustees, not now members of the corporation, I should be declaring, that if at any future time they should be elected members of the corporation, they ought to cease to be trustees, which would be most inconvenient, and would exclude all those from the trust who must enjoy the good opinion and confidence of the inhabitants. I cannot therefore think that this objection ought to have prevailed with the Master. I find that of the nine persons appointed by the Master, and objected to by the petitioners, no objection to the respectability of any one is stated, and considering that I cannot admit an objection, under the circumstances, resting solely on the fact of some of them being members of the corporation,—and I find that there are seven or eight of those appointed who are not members of the corporation, and who will be, therefore, able to prevent any evil which might possibly arise from the alleged adverse claims to the property, but which evil I see no reason to apprehend,—I do not find any ground upon which, following the principle on which the Court always acts in such cases, I can withhold my confirmation of the Master's report ; and as neither the respondents personally, or the charity fund, ought to bear the expense of this second petition, I cannot do otherwise than dismiss it with costs.

Let the usual order be made on the other petition for confirming the report.

The third petition for delivery of the deeds, &c. by the bankers, was afterwards argued by Mr. *Wigram* and Mr. *Romilly* for the petitioners, and by Mr. *Temple* for the bankers. The former said the petitioners were willing to pay

whatever was fairly advanced by the bankers in respect to the charities. They could not object to the jurisdiction of the Court in determining the extent of their *lien* on the papers, inasmuch as they had already submitted to an order of the Court, on petition to bring the papers into the Master's office.

Mr. *Temple* resisted the jurisdiction of the Court on petition to decide on the question of *lien*, which extended to all the monies due to the bankers from the depositors of the deeds. The papers were sent to the Master's office by arrangement, and without prejudice to the question of *lien*.

The *Lord Chancellor*, having found by the registrar's minutes that there was no order of Court drawn up for the deposit of the deeds with the Master, said he had no jurisdiction on the petition to order the deeds to be given up.

Petition dismissed.—*In the matter of the Ludlow Charities*, at Lincoln's Inn, March 23, May 8th and 12th, and December 2d and 7th, 1837.

Queen's Bench.

[Before the Four Judges.]

MANDAMUS.

Where an appeal had been entered in the recorder's court against a borough rate, but before the appeal was heard the town council withdrew the rate, and the town clerk, when the appeal came on to be heard, stated that there was no rate, and declined to appear, and the recorder, on that statement being made, thought he had no jurisdiction, and could make no order on the subject, this Court granted a mandamus to the recorder to grant the rate, and allow the party appealing his costs of the appeal.

Sir *W. Follett* applied for a rule to shew cause why a mandamus should not issue to the recorder of the borough of Stamford, commanding him to quash a certain borough rate made for that borough, and to allow to the appellants against that rate the costs of their appeal. It appeared from the affidavits that a rate had been made in the borough, and that there had been an appeal against it to the recorder. This appeal was entered for hearing at the Epiphany sessions. It was, however, postponed at the desire of the town clerk, but for the convenience of both parties. Before the following sessions the town council had taken the opinion of a gentleman at the bar as to the validity of the rate, and had been advised that the rate was bad ; whereupon the council withdrew the rate, and returned the money taken for the rate to the individuals who had paid it. Before the following sessions arrived, an application was made to the town clerk to know whether he meant to appear and oppose the appeal, and support the rate. To this application he gave no answer, and the appellant therefore appeared at the sessions, with his witnesses. The town clerk, when called on

in Court, said, that he did not appear on the appeal, and stated that the rate had been withdrawn ; on which the recorder observed, that as there was no rate, he had no jurisdiction, and could make no order. Application was made to him for the costs, but he said, that under these circumstances he could not give costs, as in the case of a successful appeal. The 92 section of the 5 & 6 W. 4, c. 76, gave to a recorder in a borough the same power in cases of this sort as was possessed by the quarter sessions of the county ; and the 55 G. 3, c. 51, and the 57 Geo. 3, c. 94, expressly directed as to the costs of an appeal, that these costs should be borne and paid as the justices should in their discretion order. It was clear, therefore, that as this power was not limited to cases where an appeal was fully heard and decided, and as nothing which the town council had done could withdraw from the recorder an appeal properly entered before him, he had the jurisdiction to make the order as to costs.

Rule granted.—*The Queen v. The Recorder of Stamford*. M. T. 1837. Q. B. F. J.

Exchequer of Pleas.

COURT OF REQUESTS.—PROHIBITION,

It is not competent to the Bath Court of Requests to award compensation to a person for loss of time in attending a revising barrister's court ; and semble, that if a party has not acquiesced in the jurisdiction of the inferior court, a prohibition will issue even after sentence and execution, although the want of jurisdiction shall not appear on the proceedings.

The Attorney General shewed cause against a rule which had been obtained for issuing a prohibition, directed to the commissioners of the Bath Court of Requests, on the ground that they had exceeded their jurisdiction. It appeared that on the 7th of October, the plaintiff had summoned the defendant for compensation for loss of time in attending at the court of the revising barristers ; and the case was heard on the 11th of the month, but was then postponed until the 18th, when the defendant was adjudged to pay 10s. to the plaintiff for loss of time, and 3s. costs. It was now urged, that the application came too late, for that the rule of law was, that a prohibition must be moved for before sentence, unless the want of jurisdiction appeared on the face of the proceedings. In *Richetta v. Bodenham*, 4 Adol. & Ell. 433, the authorities on the point were collected. That was a case of a motion for a prohibition to the Ecclesiastical Court, and the statute 53 Geo. 3, c. 127, came in question, by which power was given to a justice to enforce the payment of a sum due on a church rate, where its amount was under 10l. when neither the validity of the rate, nor the liability of the defendant was questioned, and by which the jurisdiction of the Ecclesiastical Court was taken away. The party had not

been summoned before a justice, but was libelled before the Consistory Court, for a sum under 10l., due on a church rate, when judgment was given against him, and the Court refused to grant a prohibition, on the ground that the validity of the rate was questioned in the proceedings before the Ecclesiastical Court ; and on reference to the pleadings, it also appearing that they did not shew whether its validity was questioned, the Court held that that circumstance alone did not authorise the issuing of a prohibition ; and the opinion which they appeared to entertain was, that they could only look to the proceedings in the Ecclesiastical Court, and not to affidavits in order to ascertain whether the validity of the rate was then questioned. In the matter of *Poe*, 5 B. & Adol. 681, where an application was made to issue a prohibition to a court martial, the doctrine was recognised that a prohibition could not issue after sentence and execution in the Court below. In the present case, the want of jurisdiction was not shewn on the face of the sentence, but it only adjudged that the defendant should pay a debt and costs. In Comyn's Digest, tit. *Prohibition*, the rule was laid down without any qualification. Then with regard to the jurisdiction of the Court : the present rule must be discharged, for the Bath Court of Requests had authority. Although it had been held in *Soames v. Rawlings*, 2 C. M. & R. 744, that the Westminster Court of Requests had not jurisdiction in a similar case, that did not apply ; for that Court had jurisdiction only in cases of debt, and the objections now taken were not then brought before the Court. By the 16th section of the Bath Court of Requests Act (45 Geo. 3, c. 67,) besides, it was provided, that it should be lawful for Commissioners "to decide and determine all disputes and differences between party and party for any sum not exceeding 10l. in all actions or causes of debt, whether such debt should arise from any bond, bill, or specialty for payment of money only, or any promissory note, or inland bill of exchange, or for rent upon leases, articles, minutes, and in all causes of *assumpsit* and *in simul computasset*, and in all causes or actions of *trover*, and *conversion*, and in all causes or returns founded on a *quantum meruit*, and in all causes or actions of *trespass*, or *detinue* for goods and chattels, taken or detained." The language of this statute then was exceedingly comprehensive, and the claim made by the present plaintiff came under the denomination *minutes*, or as a *quantum meruit*. The 22d section of the act, also enabled a party having any claim not expressly prohibited by the act, to apply to the clerk of the Court for a summons expressing the sum demanded, and stating the particulars of the demand ; and the summons being issued was to be served on the debtor, and on proof of due service, the Commissioners were empowered to adjudicate on such demands, and to pass final sentence or judgment thereon ; and by the 47th section, the judgment was made final and conclusive between the parties to all intents and purposes whatsoever.

Kelly, contra, was stopped by the Court.

Lord *Abinger*, C. B.—This case has been ingeniously argued by the learned Attorney General, who has urged every topic for the consideration of the Court, of which it would admit; but the rule must be absolute for the issuing of the prohibition. With regard to the first point, the case of *Ricketts v. Bodenham*, does not apply: there the question arose on the jurisdiction of the Ecclesiastical Courts, and they must be presumed to have jurisdiction, unless the contrary appear on the face of the proceedings. With regard to an inferior Court, however, created for a specific purpose by an act of parliament, the case is different, and the jurisdiction must be confined to that purpose, and nothing can be presumed in favour of the Court. Here then is clearly a want of jurisdiction, because the summons had no other foundation for a claim of debt than that the plaintiff attended before the revising barrister upon a notice given by the defendant: but a notice given under such circumstances, does not constitute a debt; and there appears to me to be a want of jurisdiction on the face of the proceedings. Then comes the other question, as to whether the statute 45 Geo. 3, c. 67, extends the jurisdiction of the Court to cases of this nature. All acts of parliament by which an inferior Court obtains jurisdiction, must be construed strictly, and the powers of the Court cannot be extended by implication; and it does not appear to me that this claim falls within any of the cases pointed out in the 16th section. What cases are intended to be included in the term *minutes*, I cannot say, but it certainly does not mean a claim for summoning a party before a revising barrister. Then it is said, that by the 47th section, the judgment is final; but it is a well known rule, that the jurisdiction of the Superior Courts of Law, cannot be taken away otherwise than by express words. The only writ mentioned in the 47th section, is the writ of *certiorari*. It is unnecessary now to say, whether this Court can in all cases grant a prohibition *after* sentence, for want of jurisdiction appears on the face of the proceedings.

Parke, B.—I am of the same opinion, and I think that the presumption of law is against the jurisdiction of an inferior Court; but the ground on which my decision proceeds is, the want of jurisdiction which appears on the face of the sentence. If that had not appeared, I should still have doubted whether it was not competent to the superior Court to interfere, when so short a time had elapsed between the summons and adjudication, the party having had no opportunity of applying to the superior Court. Lord Mansfield in the case of *Buggin v. Bennett*, 4 Burr. 2037, has expressed an opinion in which I fully concur. He says, "If it appears upon the face of the proceedings, that the Court below have no jurisdiction, a prohibition may be issued at any time either before or after sentence, because all is a nullity; it is *coram non iudice*. But where it does not appear upon the face of the proceedings, if the defendant below will lie by and suffer that

Court to go on, under an apparent jurisdiction, (as upon a contract made at sea,) it would be unreasonable that this party, who, when defendant below has thus lain by, and concealed from the Court below a collateral matter, should come hither after sentence against him, and suggest that collateral matter as a cause of prohibition, and obtain a prohibition upon it, after all this acquiescence in the jurisdiction of the Court below." That case was decided upon the grounds that the party had acquiesced in the decision of the inferior Court; but if the question arose here, I should desire to take some time to form my positive judgment upon the subject, and before I consented to the establishment of so unreasonable a rule, as that a party is concluded by the sentence of an inferior Court, when he had no opportunity of coming to the superior Court to prevent it. As to the matter in dispute, no doubt exists that the Court of Requests had no jurisdiction.

Bullard, B., concurred.

Alderson, B.—It appears on the face of the proceedings, that the inferior Court has exceeded its jurisdiction; but even if that were not so, strong reasons exist for the interference of the Court. Prohibition is a writ at common law, and may be granted at any time, even after execution, and the only exception is, when a want of jurisdiction does not appear, and the party has submitted voluntarily to the inferior jurisdiction. It is laid down in 2d Institute, p. 602, that prohibition by law may be granted at any time to restrain a Court from intermeddling with anything of which by law they ought not to hold plea, and the King's Court being informed either by the parties themselves, or by any stranger, that any Courts, temporal or ecclesiastical, holds plea of that in which they had no jurisdiction, it may lawfully prohibit the same, as well after judgment and execution, as before.

Rule absolute.—*Roberts v. Humby*, M. T. 1837. Excheq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to Children of tender age. Mr. Serjt. Talfourd.

[This bill stands for second reading on the 14th Feb.]

To amend the Law of Copyright
Mr. Serjt. Talfourd.
[Leave has been given to introduce this Bill.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Maekinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.
Mr. Aglionby.

[This bill is now in Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts. 14th Feb. Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb. Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

LAWS OF PROPERTY.

To improve the Tenure of Copyhold and Customary Lands. Attorney General.

To alter and amend the Law relating to the Mortgages of Ships and Vessels.

Mr. G. F. Young.

[This bill stands for second reading on the 2d Feb.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagees in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchanges, and for giving a summary Partition in all cases as to Lands in Ireland. Mr. Lynch.

[This and the previous bill stands for second reading on the 21st Feb.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch, and Mr. James Stewart.

[This bill stands for second reading the 28th Feb.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for second reading.]

To amend the 6 & 7 W. 3, for facilitating the Inclosure of Open and Arable Fields in England and Wales. Lord Worsley.

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on Feb. 7th.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges. 12th Feb. Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime. Mr. Barneby.

[The third reading of this Bill is fixed for the 9th Feb.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales." 8th Feb. Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament. Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To regulate the times of Payment of Rates and Taxes by Parliamentary Electors, and to abolish the Stamp Duty on the Admission of Freemen. Lord John Russell.

[This bill is in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament. Mr. Hume.

[This bill stands for second reading, 19th Feb.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

Mr. Warburton.

[For second reading 5th Feb.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

Mr. Hume.

[For second reading, Feb. 19.]

MISCELLANEA.

TURKISH COURTS OF JUSTICE.

A Turkish merchant residing at Cairo died, leaving property to the amount of 30,000*l.*, and no relation to inherit, but one daughter. The chief of the merchants of Cairo, hearing of this event, suborned a common fellow who was the Bowwab, or door-keeper of a respected Sheykh, and whose parents (both of them Arabs) were known to many persons, to assert himself to be the son of a brother of the deceased. The case was brought before the Cadée; and as it was one of considerable importance, several of the principal Oolama of the city were summoned to decide it. They were all bribed or influenced by the chief of the merchants; false witnesses were brought forward to swear to the truth of the bowwab's pretensions, and others to give testimony to the good character of these witnesses. Fifteen thousand pounds were adjudged to the daughter of the deceased, and the other half of the property to the bowwab. The chief Mooftee was absent from Cairo when the case was tried. On his return to the metropolis, the daughter of the deceased merchant repaired to his house, stated her case to him, and earnestly solicited redress. The Mooftee, though convinced of the injustice she had suffered, and not doubting the truth of what she related respecting the part which the chief of the merchants had taken in this affair, told her that he feared it was impossible for him to annul the judgment, unless there were some singularity in the proceedings of the court, but that he would look at the record of the case. Having done this, he betook himself to the Basha, with whom he was in great favour for his knowledge and integrity, and complained to him that the tribunal of the Cadée was disgraced by the administration of the most flagrant injustice; that false witnesses were admitted by the Oolama, however evident and glaring it might be; and that a judgment which had been given in a late case during his absence, was the general wonder and talk of the town.

The Basha summoned the Cadée, and all the Oolama who had tried this case, to meet the Mooftee in the citadel, and when they had assembled there, addressed them, as from himself, with the Mooftee's complaint. The Cadée appeared, like the Oolama, highly indignant at this charge, and demanded to know on what it was grounded. The Basha replied, that it was a general charge, but particularly grounded upon the case in which the court had admitted the claim of a bowwab to relationship and inheritance, which they could not believe to be his right. The Cadée here urged that

he had passed sentence in accordance with the unanimous decision of [the Oolama then present. 'Let the record of the case be read,' said the Basha. The journal being sent for, this was done; and when the secretary had finished reading the minutes, the Cadée, in a loud tone of authority, said 'and I judged so.' The Mooftee, in a louder and more authoritative tone, exclaimed, 'and thy judgment is false.' All eyes were fixed in astonishment, now at the Mooftee, now at the Basha, now at the other Oolama. The Cadée and the Oolama rolled their heads and stroked their beards. The Mooftee was now desired by the other Oolama to adduce a proof of the invalidity of the decision. Drawing from his breast a small book on the laws of inheritance, he read from it; 'to establish a claim to relationship and inheritance, the names of the father and mother of the pretended bowwab, should be adduced,' and these, the false witnesses had not been prepared to give: and this deficiency in the testimony (which the Oolama, in trying the case, purposely overlooked,) now caused the sentence to be annulled."—*From Lane's Manners and Customs of the modern Egyptians.*

THE EDITOR'S LETTER BOX.

We have inserted some of the letters received relating to the new Common Law Fees, and are willing to extract the substance of others; but would suggest the expediency of their being of a practical kind. We mean that the remarks should not be of a vague and general nature, but bear on some specific items of objection.

The suggestion made by P. F. G., shall be adopted at the conclusion of the present volume.

The letter of a proposed Articled Clerk "on Trial," will appear in an early number.

The communication on a Barrister's Advocacy of his Client's Cause is acceptable.

The information as to the United Law Clerks' Society shall be given at the first opportunity.

We have now reprinted several numbers, and complete Sets of the Legal Observer may be obtained of the Publisher. Subscribers desiring to have any separate numbers to complete their Volumes will be supplied with them on the usual terms for a short time to come. The first Ten Volumes with a General Index may be had for 5*l.*

The Legal Observer.

SATURDAY, JANUARY 20, 1858.

— "Quod magis ad nos
Pertinet, et nescire malum est, agnoscimus.

HORAT.

A MEMOIR OF THE EARL OF ELDON.

LORD ELDON died at his house in Hamilton Place, on Saturday last, the 13th of the present month. The great events of his life are familiar to almost all our readers, but it still becomes our duty to put them on record in these pages; and looking on him as lawyers, we cannot but feel much professional pride and pleasure in doing this. Many a student has

"Scorned delights and lived laborious days,"

after considering his career. Many a mother has pointed him out to her son as his great example—a coal fitter's son, who, by his own talents and industry, carried off every great prize which the wheel of the law possesses, and raised himself from one of the humblest stations in the land to be the first and most confidential subject and counsellor of his Sovereign. As he never shrank from the broadest avowal of his political opinions, and as he acted on them with undeviating consistency, he necessarily brought upon himself the bitterest opposition of those who thought differently from him; but without opposing or adopting these opinions, we must give him full credit for the conscientious firmness with which he maintained them. We now proceed to mention the principal events of his life.

John Scott was born at Newcastle-on-Tyne, on the 4th of June, 1751. His parents were respectable, but not wealthy. His father was what is called in the North a "coal fitter,"—a person whose duty it is to superintend the working of a coal mine. He had three sons; Henry, who was brought up to his father's business; Wil-

liam, afterwards Lord Stowell;^a and the subject of this memoir. William and John were educated at the Free School of the town of Newcastle, where they both distinguished themselves, and both obtained exhibitions.

William, who was more than five years older than John, preceded him at school and college. John was sent to Oxford in 1766, and entered at University College, where he enjoyed the advantages of finding a friend and instructor in his brother, who had been appointed Tutor of that College. The younger brother, however, soon rivalled his master in reputation. In 1771 he obtained the Chancellor's prize for the English essay, the subject being "the Advantages of Foreign Travel." He also acted as the deputy of the Vinerian Professor, and was on the high road to all the distinctions of the University. He was chosen a Fellow of University College; but an event which happened soon afterwards deprived him of this competency, and forced him to rely on his own resources.

This was his marriage, to which, perhaps, we may attribute much of his future distinction. He became acquainted with Miss Elizabeth Surtees, the daughter of Aubone Surtees, Esq., a wealthy banker in his own part of the country. The lady was propitious, but her family hostile, and it ended in an elopement and a marriage at the orthodox shrine of run-away lovers—Gretna Green. The match was disowned by the lady's friends, and the young people left to fight their way as they best could.

John Scott, at once deprived of the

^a See a Memoir of Lord Stowell, 11 L. O 249.

assistance derived from his Fellowship, and all aid from his wife's family, on which he had probably relied, was forced into active life. He had already entered himself at the Middle Temple in the preceding year, and now coming to London, he seriously applied himself to the study of the law. The second floor, in Carey Street, where he and his wife lived, is still shown to the curious, and many stories are afloat of the shifts which the young couple were sometimes put to. These did not, however, prevent Scott's diligent study of the law. He has himself referred, in one of his judgments,^b to the "two years which he passed in Mr. Duane's office." Mr. Duane was one of the most celebrated conveyancers of the day; and the future life of his pupil shewed that he made good use of his time while under him, as his knowledge of the laws of property was never surpassed, and he always deferred, with great respect, to the established practice of conveyancing.

This period of his life was doubtless an arduous one; but it ended in Hilary term 1776, when he was called to the bar. He chose the Chancery Court for his department, and he also went the Northern circuit; it being usual in those days for the gentlemen of that bar to go the circuit. It is generally said that after being called, he remained some years without practice, and was in great difficulties. These, however, we do not believe existed to any extent. He might have had much embarrassment while under the Bar; but once in the *arena*, his merit soon made its way. By some it is said, that he owed his first distinction to the accidental absence of his leader on circuit; by others, to a similar failure of his senior in conducting the Clitheroe election petition; but whichever way this was, John Scott, when the opportunity did offer, was the man to show that he was fit for it. His success, so far from being tardy, was more than usually rapid, as, seven years after he had been called to the bar, in 1783, he received a Patent of Precedency, and was shortly afterwards returned to Parliament for Weobley, in Herefordshire,—a borough then under the influence of Lord Weymouth.

He speedily came into extensive practice as a leading counsel in the Courts of Equity, and was soon distinguished by Lord Thurlow, who offered him a Mastership in Chancery, which, however, he declined. He was

now fairly in the stream of political distinction, and was soon found equal to sound its depths and shallows. We are not writing his political life: we have only therefore to state the steps of his professional career. In 1788 he was made Solicitor General, and knighted,—which latter honour, it is said, he would have avoided. In 1793, he was raised to the Attorney Generalship,—a most trying distinction at that eventful period: as, being the first Crown Officer, he had to bear the chief responsibility of the state trials of that time. In 1799 he was, at his own particular request, raised to the Chief Justiceship of the Common Pleas, and a Peerage, by the title of Baron Eldon, was added; and, according to his own declaration, he neither looked nor wished for any higher situation.

In 1801, however, he was created Lord High Chancellor, and retained the Great Seal, with the interval of a year^a and some months, until 1827, being nearly a quarter of a century, a longer period than it had been held by any of his predecessors.^d In 1821, on the coronation of George IV, he was created Earl of Eldon and Viscount Encombe,—an honour which, we believe, he had previously declined. In 1801 he had also been elected High Steward of the University of Oxford, which office he retained till his death. We have heard, however, that he much desired the Chancellorship of that University, and was much mortified at not obtaining it.

There are, certainly, few men who have been called to act so prominent a part on the stage of life for so extended a period. It is now little more than ten years ago since he resigned the Great Seal. He took a part for some years afterwards in the debates of the House of Lords; but of late he has retired altogether to private life. He however retained his faculties, and died rather from a gradual decay, than any positive disease. His habitual good humour and suavity of manners remained to the last. We lately heard a pleasing instance of this. On stopping for the night at an inn in a country town, he learnt by accident that two young barristers were also in the house. He immediately sent his compliments to them, although perfect strangers, and begged the favour of their company to dinner. They very gladly accepted the invitation; and du-

^a Lord Erskine held the Great Seal from Feb. 1806, to April, 1807.

^d Lord Hardwicke held it from 1736 to 1756 — a period of twenty years.

^b *Marquis of Townshend v. Bishop of Exeter*, 27th Jan. 1820.

ring and after dinner, he related to them all his early professional difficulties; told many amusing stories of the eminent men with whom he had been connected, pushed round the bottle with a youthful alacrity, mingled his good cheer with the most agreeable conversation, and at length left his guests, delighted with his amenity and courtesy.

Among his other distinctions Lord Eldon was the Father of the Bar. The recent deaths of Sir Robert Graham and Sir James Burrough left him, we believe, the very oldest barrister living. He was called, as we have seen, in February 1776, and he had therefore, at his death, been very nearly sixty-two years at the bar.

His name must long be remembered in our Courts of Equity. We have already given our opinion* of him as a Judge, and we have seen no reason to alter it. As a politician, he is beyond our province. As a man, he has lived and died without reproach. He was amiable in private life, and much beloved and respected in his own circle.

His wife, who had shared his adversity, lived to see him advanced to the highest honours of the state, and also to share them with him. She died in June 1831.

He left two daughters. Lady Frances, married to George Bankes, Esq., the Curator Baron; and Lady Elizabeth, married to Mr. Repton, the architect. He is succeeded by Lord Encombe, his grandson, the only son of the Hon. John Eldon, the eldest son of the late Earl, who died in 1805, and Henrietta, only daughter of the late Sir M. Ridley. This lady is married to James W. Farrer, Esq., Master in Chancery.

Lord Eldon also had another son, William Henry John, who died in 1833, without issue. The present Earl married the Hon. Louisa Duncombe (second daughter of Lord Feversham).

PRACTICAL POINTS OF GENERAL INTEREST.

RESTRAINT OF TRADE.

WE have recently stated the cases with respect to what will be considered in law a restraint of trade. (See 14 L. O. 106.) A case has recently come before the Courts, in which the point was discussed, whether

a party can be restricted from exercising his business in a particular place for his life, notwithstanding the death of the other party. In *Bunn v. Guy*, 4 East, 190, a covenant by an attorney, who had sold his business to two others, that he would not after a certain day practise within certain limits as an attorney, was held good in law, though the restriction was indefinite as to time. In *Chesman v. Nairby* (in error), 1 Bro. P. C. 234; the condition of the bond was that Elizabeth Vickers should not, after she left the service of the obligee, set up business in any shop within half a mile of a dwelling-house of the obligee, and the contract was held to be valid, though the restriction was obviously indefinite in point of time, and although one of the grounds on which the validity of the contract was sought to be impeached was that the restriction was for the life of the obligor. So also in *Wickers v. Evans*, 3 Yo. & J., the agreement in restraint of trade was made to continue during the lives of the contracting parties, and no objection was taken on that ground. In the case to which we have alluded, the defendant agreed that he would not carry on the trade of a druggist at Taunton, at any time thereafter. And the Court of King's Bench decided that the agreement was illegal, inasmuch as it was not limited to such time as the plaintiff should carry on business in Taunton, nor to any given number of years nor events, nor the life of the plaintiff, but that it attached to the defendant so long as he lived, although the plaintiff might have left Taunton, or parted with his business, or be dead. However, the plaintiff brought a writ of error in the Exchequer Chamber, and *Tindal, C. J.*, delivered the judgment of the Court, reversing the decision of the Court of King's Bench, on the authorities we have before cited. *Hitchcock v. Coker*, 1 Nev. & P. 796.

NOTICES OF NEW BOOKS.

Addenda to the Practice of the High Court of Chancery: containing the Orders issued on the 23d of February, 1837, relating to the Fees of Court; and the Orders issued on the 5th of May, 1837, for better Regulating the Hearing of Causes. By a Chancery Barrister. John Richards & Co., 1838.

THE small Chancery Practice, by a Chancery Barrister, has, we believe, been extensively circulated among our readers. It

* See an estimate of his judicial character, 1 L. O. 193 & 209. And see a notice of his early days, 5 L. O. 82.

forms so ready a Supplement to any of the popular books on that branch of Practice in the hands of the profession, that we have long referred to it ourselves. The present Addenda to it contains all the Orders issued since it was published, and renders it complete down to the present time.

ON THE CLERKS IN RECORD OFFICES ACTING AS AGENTS.

In the General Report on Public Records, which was printed in our Monthly Record for December, will be found the following passage: "There are other practices to which it appears that reasonable objections may be made, as, for instance, that of *clerks in the offices acting as record agents for parties in suits*. This practice opens the way for unfair employment of the record evidence of the country, which is, by law, common and equal among all litigant parties."

The impropriety which is here complained of, owes its origin to the circumstance that, until about half a century since, records were very little referred to, and no persons were capable of either finding or reading them but the keepers, and it was a convenience to the public that Mr. Caley, Mr. Vanderzee, and Mr. Hewlett, gave their time to produce them and explain their purport. Mr. Lysons of the Tower, Mr. Kipling of the Rolls, and Mr. Rose of the Chapter House, would never engage themselves as agents—one of them certainly, if not the whole, considering a retainer to forward the interest of one party to the defeat of another, inconsistent with the duty of a public officer, holding the documents of the nation for the equal advantage of all parties. Neither would the late Mr. Kipling allow his clerks to be retained by any person. There are many evils attendant on such a practice:

First,—The public office business is, of course, made to give way to the private convenience of the clerk, or altogether neglected; for the time occupied in private researches must be taken from the public service.

Secondly,—A clerk engaged by a plaintiff or a defendant to act as his agent, sees in his official character the case of his opponent, by the documents which that opponent examines and takes copies of. This is not only in itself a most unjust proceeding, and such as, at the present day, no

solicitor of character would wish to sanction, but subjects both parties to the expense of a new trial; for one party may thus be unjustly defeated from being taken by surprise with evidence which he in his turn may be able to rebut, and a new trial is the consequence.

Thirdly,—It is not necessary to speak disrespectfully of any clerks at present in public offices, in saying that they who have the care of public records ought not to be in situations where they receive reward for promoting the cause of one individual against another—it is an unjust temptation to wrong to place a young man where the *non production* by him of a record may entirely defeat justice. It is not necessary he should embezzle or destroy; the omitting to give information may answer his purpose.

Fourthly,—It is a rule, and a most proper regulation, at record offices, that no person attending to inspect a record be permitted to see it except in the presence of one of the establishment; for it might happen that an interested person would deface or destroy it. If this be (as it is) a desirable regulation towards the public, when detection of wrong must immediately be discovered, how strongly does it point out the impropriety of *intrusting* records to persons, who may be equally interested with any one of that public, in defacing or destroying them, and whose detection is impossible, unless through their own carelessness.

NEW BILLS IN PARLIAMENT.

BENEFICES-PLURALITY.

The first clause in the 57 G. 3, c. 99, recites the following statutes:—21 Hen. 8, c. 13., 28 Hen. 8, c. 13., 13 Eliz. c. 20., 14 Eliz. c. 11., 18 Eliz. c. 11., 43 Eliz. c. 9., 3 Charles 1, c. 4., 12 Ann. st. 2, c. 12., 36 G. 3, c. 83., 43 G. 3, c. 84., 43 G. 3, c. 109, and 53 G. 3, c. 149; and repeals so much of the first seven as relates to farming and trading by spiritual persons, and to residence;—so much of the two next as relates to curate's stipends;—and the whole of the three other acts.

The effect of this was, to repeal the whole of the then existing statute law, as to *farming and trading, residence, and curate's stipends*; but to leave unaltered so much as applied to *pluralities*.

Section 1, of the present bill recites and repeals, in effect, the whole present statute law upon all these subjects, *including pluralities*; with a saving as to penalties already incurred or licenses already granted.

The present law of pluralities rests partly upon custom, and partly upon statute; and involves so many nice and technical points, that any attempt at a close abstract of it must afford a very imperfect view. (But see Burn's Ecclesiastical Law, vol. 3. tit. Plurality.)

The following clauses in the bill (2 to 9, inclusive) propose to establish a complete and uniform law upon the subject of pluralities.

2. Holder of more benefices than one, or of one cathedral preferment and one benefice, may not take any other preferment whatever. Holder of any cathedral preferment may not take preferment in any other cathedral. But this not to prevent an archdeacon from holding two benefices if one within his archdeaconry, or a canon in the cathedral of the diocese and one benefice in the diocese; nor to prevent the holder of any cathedral preferment from also holding any office the duties of which are statutorily or accustomedly performed by the holder of such preferment.

3. Holder of cathedral preferment or benefice of *l.* value, may not take benefice or cathedral preferment, as the case may be, of more than *l.* value; but this not to apply to holders in possession 12th March 1836.

4. No two benefices to be held together, unless within ten miles of each other.

5. Two benefices within that distance, neither exceeding 500*l.* per annum, nor within a population of more than , may be held together.

6. If the bishop think it expedient that two benefices within distance, one above and the other below 500*l.* should, on account of the small value or large population of one of them, be held together, he may state the reason in writing to the archbishop; upon a report of whose approval, the Queen in council may grant permission. Notice in the London Gazette to be the authority for holding the two livings.

7. Acceptance of preferment contrary to this act to vacate all former preferment; but upon the holder of two benefices who accepts any cathedral preferment, except an archdeaconry, declaring to the bishop in writing which of the benefices he will retain, the other only to become vacant.

8. License or dispensation for holding any second preferment under this act to be unnecessary.

9. All present rights of possession saved.

10. Repeals 37 Hen. 8, c. 21, and 17 Car. 2, c. 3.

Several of the provisions of these two repealed acts are re-enacted, and extended as follows:—

11. Upon the representation of the bishop or bishops, as the case may be, that two or more benefices within a mile of contiguous to each other, one not being above the value of 6*l.*, not exceeding 1,500 aggregate population, and 500*l.*, in towns corporate 100*l.*, aggregate value, may with advantage to interests of

religion be united into one benefice, the ecclesiastical commissioners for England, if satisfied thereof upon inquiry, with the written consent of the ordinary and patron, and of all persons interested therein, certify the same to the Queen in council, who may thereupon issue an order for uniting such benefices for ecclesiastical purposes only, and making conditions as to residence and employment of curates, and regulations respecting the patronage and episcopal jurisdiction. Directions for registering orders and fixing fines for commencement of the unions. All parishes in towns corporate to continue separate as to rates, &c. Person having the right of next presentation to be considered the patron for the purposes of this act.

12. No other benefice to be united to such united benefice, where their aggregate value would exceed 1,000*l.*, and their aggregate population 1,500.

13. All future unions in any other form than that prescribed by this act to be void.

14. Provisions, *à converse*, as in clause 11, for disuniting united benefices; written consent of patron necessary where they have been united more than years.

15. If benefice be full at the time of such disunion, incumbent may resign one or more of the benefices, and patron may thereupon present.

16. Similar provisions for separating one only of the benefices where more than two have been united, which incumbent may then resign, and thereupon patron may present.

17. Empowers the Queen in council, upon the recommendation of the said commissioners in either of the cases of disunion before provided for, to apportion, with the written consent of the patrons, the glebe lands, tithes, moduses, rent charges, or other emoluments; and also the charges and outgoing, together with the mortgages, if any, with the consent under hand and seal of the mortgagees.

18. Such lands &c. when so apportioned, to belong to the incumbent of the benefice to which they shall have been assigned.

19. Empowers the Queen in council to alter the boundaries of two contiguous parishes, or to separate chapelries of ease from the mother church, and unite them to some other contiguous benefice, or to any other chapelry of ease similarly circumstanced, so as to form separate parishes or benefices. Consent of patron to be under hand and seal; but order not to be binding on the incumbent until the next avoidance, unless he shall previously have consented thereto in writing.

20. Empowers the Queen in council, in the event of disputes arising as to the detail of the foregoing changes, to make a supplemental order within five years.

21. Holder of any cathedral preferment, benefice, or ecclesiastical duty, not to take to farm more than eighty acres, without written consent of bishop, which is to be limited to seven years. Penalty, forty shillings annually for every acre beyond eighty, the whole to any reformer.

The proceeding by information or action at law is abolished, as against spiritual persons, throughout the bill. For modes of preceeding, see clauses 103 *et seq.*

22. Nor to trade or deal for profit. Bargain void, as against the clergyman. Value of goods forfeited. But he may keep a school, or engage in instruction for profit. Or, buy for family or household use, and sell again; or buy and sell cattle, corn, &c. for all purposes connected with lawful farming &c.; but must not sell publicly in person.

23. Residence to be kept in the house of residence (if any) belonging to the benefice. Penalties for absence without license or lawful exemption, according to the following scale:

3 months and not exceeding 6, $\frac{1}{2}$	} value of living.
6 8, $\frac{1}{2}$	
8 12, $\frac{1}{2}$	
Whole year 12, $\frac{1}{2}$	

The time to be accounted either together or at several times in any one year.

24. Where no house or no fit house of residence, residence for nine months in the year within the benefice, or within the city, &c. where it is situated, if within two miles from the church, to be considered as legal residence. The bishop may license, for a certain specified time, any house within two miles of the church except in a city, market or borough town, and then within one mile only.

25. Houses purchased by the Governors of Queen Anne's Bounty as benefactions to poor benefices, not situate in, but so near to the parishes in which such benefices lie, as to be suitable for residence, shall be deemed houses of residence, after being duly approved by the bishop.

26. Wherever a rectory has an endowed vicarage or perpetual curacy, the vicar or perpetual curate, may reside in the rectory house, if the vicarage or curacy house be kept in proper repair to the bishop's satisfaction.

27. Persons to be wholly exempt from the penalties of non-residence upon condition of their not holding more than one benefice with cure:

Dean of any cathedral or collegiate church: head of any college or hall at Oxford or Cambridge; warden of the university of Durham; head master or usher of Eton, Winchester or Westminster; principal or professor of the East India College; chancellor, vice chancellor, commissary, in either of the universities of Oxford or Cambridge; bursar, treasurer, dean, vice president, sub dean, public tutor or chaplain, or other such public officer in colleges or halls of the universities; public librarian, registrar, orator, proctor, or other such public officer in the universities; minor canons, vicars choral, priest vicars, or other public officers in cathedral or collegiate churches; chaplain general of the forces; chaplain of the dock yards; chaplains of British ambassadors abroad and those specially exempted by any other act.

28. Persons to be temporarily exempt from the penalties of non residence, and permitted to account the time of their attendance or

performance of duty as residence on some benefice: Professors and public readers, whilst actually reading and lecturing in either university, during the time required by conditions of office; the fact of residence and performance of duties being certified yearly, under the Vice Chancellor's hand to the bishop of the diocese where the benefice is situated;—chaplains to the Queen or King; or their children, brothers or sisters, while actually attending in discharge of their duty;—chaplains to archbishops and bishops, while actually attending in discharge of duty as such; chaplain of the House of Commons; clerk or deputy clerk of the closet of the Queen or King, or heir apparent, while actually attending and performing duties of office; chancellor, vicar general, commissary of any diocese whilst exercising the duties of office; archdeacon, while upon visitations, or otherwise engaged in the exercise of his functions; dean, sub dean, priest, reader, while residing and actually performing duty in the chapel royal at St. James's or Whitehall, or in Queen's or King's private chapel at Windsor, or elsewhere; provost of Eton and warden of Winchester college; master of charterhouse, during actual residence for required time; scholars in the universities, under thirty, abiding for study without fraud, chaplains to temporal lords of parliament, and to other persons authorized by law to appoint chaplains; preachers of the Inns of Court or at the Rolls; fellow of any college in either of the universities, during the time for which he may be required to reside by any charter or statute, while actually residing.

29. Under this clause, deans of cathedral or collegiate churches, while residing on their deaneries, prebendaries, canons, priest vicars, vicars choral, minor canons, or other dignitaries of cathedral or collegiate churches, and fellows of the colleges of Eton and Winchester, resident and on duty for any the period not exceeding four months altogether within the year required by the local statutes, may account the same legal residence on some benefice, provided they are not absent from their benefice for more than five months altogether in any one year, including the time of residence on the dignity, &c.; unlimited power to the bishop to license the non-residence of any resident dignitary of a chapter, in case of its being required for the performance of the chapter duties.

30. Rights to exemptions and to petition for licenses of non-residence preserved to all incumbents and dignitaries in possession, on 12th March 1836.

31. Any non-resident incumbent not keeping the house of residence in repair, or upon motion not repairing it within a specified time, to the bishop's satisfaction, to lose the benefit of his exemption or license while the house is out of repair.

32. Every application for a license to be in writing, signed by the applicant, specifying the various particulars enumerated in the clause, and to be filed in the registry of the diocese.

33. Discretionary power to the bishop, upon application in writing, with such proof of facts upon affidavit as he may require, to grant a license for non-residence in the following cases, the cause of granting it being specified in the license: 1. Actual illness or infirmity, incapacity of mind or body of the incumbent. 2. Where no house of residence, or house unfit, if not rendered so by the incumbent's negligence, he keeping the house, if any, in good repair; a certificate being first produced to the bishop from two neighbouring incumbents, countersigned by the rural dean, if any, that no convenient house can be obtained within the parish or within the limits prescribed by clause 24. 3. Or to grant a license to reside in any mansion or messuage in the parish, whereof incumbent is the owner, he keeping the house of residence in proper repair. To the holder of any benefice of small value, serving as a licensed stipendiary curate elsewhere, and providing for the service of his benefice to the satisfaction of the bishop: to the master or usher of an endowed school licensed by the bishop, and actually employed in teaching therein; to the master or preacher of any hospital or incorporated foundation, while residing &c., for the period required by charter, &c.; to the holder of any endowed lectureship, chapelry, or preachiership, on actual duty, with the license of the bishop; to the holder of any small benefice, serving as preacher in a proprietary chapel, with the bishop's license; to the acting chaplain in any of the king's garrisons, in the military asylum at Chelsea, the military college at Sandhurst, the military college at Woolwich, the royal hospitals at Greenwich or Chelsea, Haslar or Plymouth, the naval asylum, the Royal Navy, the gaol of Newgate, or the penitentiary at Millbank, or in any British factory. To the principal surrogate or official in any ecclesiastical court. To the librarian of the British Museum, or of Sion College. To the trustees of Lord Crewe's charity. In case of refusal applicant may within a month appeal to the archbishop.

34. Discretionary power to the bishop in any case, under special circumstances, to grant a non-residence license; and, where a stipendiary curate is employed, to assign to him a proper salary, having respect to the value and population of the benefice, and other circumstances; if no curate, to appoint one; and to assign a salary, or an additional salary, as the case may be; and to cause such salary to be paid by sequestration. No such license to be valid until allowed and signed by the archbishop; for which purpose the nature of it, the special circumstances, and the bishop's reasons, are to be transmitted to the archbishop, who, upon inquiry, by himself or a commission, has absolute power of refusal or alteration.

35. During the vacancy of a see, licenses may be granted by the guardian of the spiritualities of the diocese; and in case of the bishop's disability, by the person empowered to exercise his general jurisdiction in the diocese;

but not to be valid without the signature of the archbishop.

36. No license to continue in force for more than three years, or after the thirty-first of December in the second year after the year in which it is granted.

37. A fee of ten shillings, exclusive of stamp duty, to be paid to the bishop's secretary for the license; three shillings also to be paid to registrar, and five shillings to the secretary of the archbishop when license signed by archbishop.

38. License not to be void by the death or removal of the bishop granting it.

39. Any license may be revoked by the archbishop or bishop, or the successor of either of them, time being given to show cause against such revocation; but an appeal to lie against such revocation if by the archbishop, archbishop to order such fees and charges to be paid by appellant, as he shall think fit.

40. All grants or revocations of licenses to be filed in the registry within a month. A book to be kept, with an alphabetical index, for inspection on a fee of three shillings. Copy of license to be transmitted by grantee, and of revocation by bishop, within a month, to the churchwardens; to be by them produced and publicly read at the next visitation, unless in the mean time annulled by archbishop on appeal, and in that case to be forthwith withdrawn from registry or parish chest. Grantee neglecting to transmit copy of license to churchwardens, to lose the benefit thereof. Registrar neglecting to enter license or revocation to forfeit 5*l*.

41. A yearly return to be made to the Queen in council, of all licenses granted or allowed by the archbishop, specifying his reasons, or the reasons of the bishops, as the case may be. The Queen in council may revoke any such license, the order being transmitted to the archbishop, then to the bishop, and registered and communicated to the churchwarden, &c., as in last clause. The license to be valid, until actual revocation.

42. Bishops annually to transmit to all incumbents the questions contained in the schedule to this act, with such others as may be directed by the Queen in Council. Non-resident incumbents to transmit to the bishop, within six weeks from the 1st January every year, within three weeks after receiving such questions, certain particulars specified in the act, full answers thereto, countersigned by the rural dean, if any, subject to a penalty of 20*l*.

43. Each bishop to make an annual return to the Queen in Council, on or before the 25th March, of all benefices; and of all incumbents, resident and non-resident, by or without exemption or license; of all licensed curates, where incumbent not resident, the amount of their salaries and their places of residence—whether the living amounts to or exceeds three hundred pounds; and also the substance of the answers received to the questions transmitted as aforesaid.

[*To be continued.*]

A BARRISTER'S ADVOCACY OF HIS CLIENT'S CAUSE.

Truth is stating things as they are, in contradistinction to falsehood, which is stating things otherwise than they are. But truth, morally speaking, is stating things as we believe them to be; while we tell a falsehood if we represent things to be other than we believe them to be, although in point of fact, they are in reality as we state them. So that the grand distinction of truth, in the common acceptance of the word, is according to the *belief* of the party.

That a firm and rigid adherence to truth in this sense is the most honourable feature in a man's character, that it is one of the necessary bonds of civil community, and that, without it, the ties of relationship, of duty, and of love, would be merely words, cannot we think, by any one be denied.

The strict preservation of truth being then of such consequence to all, it becomes us to inquire if any deviations from it, in any way or on any pretences, should be admitted. We shall have no difficulty in answering this question by a decided negative, when we consider how difficult it would be to lay down any rule, or draw any distinction, between those cases where we would allow a man to state what he knows to be contrary to the truth, and where we would not. Some, we are aware, think it is no harm to say what is not true, if it be only done to serve a friend; others again think it not wrong to tell stories, if they are only what they please to term "harmless" ones; but although we detest all cant and all methodism, and every pretence to set ourselves up as purer or better than the rest of the world, we will yet firmly protest against any exceptions; feeling assured that no line can be drawn, and that when the barrier of truth is once levelled, all distinction as to the harmlessness of stories is done away with. We should therefore, never allow for a moment, the principle that a deviation from the strict truth, should at any time, or under any circumstances be permitted. No question of expediency should ever be considered—no palliation of circumstances ever allowed.

Now these arguments are all prior to the consideration of a point, which is more immediately the subject of this paper. It is as to how far a barrister ought to avow or conceal his opinion of his client's cause in arguing it before judge or jury. Many young men at first going to the bar, perceiving how much it helps them in obtaining a favorable decision, if they appear to be fully convinced of the justice of their client's cause, if they refuse to hear conviction, and are impenetrable to the voice of reason, when proceeding from an opposing counsel, have fallen into what appears to be, according to the rules above laid down, a very grave error. They have been led to affirm in an open court, before a large audience, that they think they never saw so clear a case;—that there is no doubt;—that

the law has adjudged it so and so;—that they cannot for their part conceive how any man can have any doubt on the subject, &c. &c., and other similar speeches,—stating as solemnly as men can do, except upon their oath, that they firmly and conscientiously believe in the justice of their client's cause: and yet all the while, these same men, coming out of court, will say they never saw such a bad case as their client's, not a single point in it, &c. &c., and perhaps laugh at the credulity of a jury, who, won by their asseverations, have decided the cause in their client's favor.

These gentlemen, I willingly believe, do not see the consequences to which this conduct tends, and the world itself is generally apt to look at such deceit with a lenient eye, as being only a necessary part of the profession of a lawyer. But I am disposed severely to reprobate such conduct.

First,—Because the truth, as before shown, ought never in the slightest degree, or under any pretence, to be departed from.

Secondly,—Because such conduct is not necessary for the ends of justice, or the client's true interest.

Thirdly,—Because it imperceptibly tends to dull the fine sense of right and wrong in the persons themselves practising it.

And lastly, but not least,—Because it offers occasion for an unmerited and shameful opprobrium to be cast on the profession of an advocate, that he will barter right and wrong for the sake of a paltry fee.

It is urged in extenuation by some, that a barrister stating his belief of the truth and justice of his side, only states it "*in loco clientis*," and that every one knows the barrister does it merely for the interest of his client, and not from his own private conviction. But this is a shallow excuse, for if this were true, what need or what use would there be in an advocate's availing himself of it, since it would have no weight. It is clear therefore that to have the effect it has, (and this apparent conviction of the justice of his cause on the part of an advocate of celebrity, has often great weight with a jury,) it is taken as the genuine expression of the advocate's view of the case. And a man thus bartering his word, his honour, for what?—for a paltry fee of a few guineas. And this same man is yet called a man of honour, and you may take his word with the most perfect confidence, you are told, in any other matter than a legal one.

A client's cause can be as well, as powerfully, as eloquently advocated, without a barrister's placing his personal testimony and conviction in the scales; and disguised as it may be by casuistry and sophistry, it is nothing better than a man stating what he knows to be false. He says he believes that his client is clearly in the right, when he knows him to be clearly in the wrong; and thus he bartereth truth for the sake of the reputation of a successful advocate.

Let it not be thought that I wish a barrister to become the judge in the cause, and to decide which is right and which is wrong, against

perhaps his own client. No, let him advocate his own cause as strongly as he can; let him bring all the arguments he can to bear on his side of the question; let him put it in the most favorable view he can;—but let him not throw in the weight of his own word; let him not state falsely the conviction of his judgment; let him not give a handle for it to be said, that the honourable and dignified profession of the barrister, is nothing more than that of making the worse appear the better reason, and that every lawyer must therefore be, as the old adage hath it, “a rogue.” S. B.

EMOLUMENTS OF ATTORNEYS.

To the Editor of the Legal Observer.

Sir,

I am at present in a solicitor's office in the city on trial, to see whether I shall like the profession of the law; and if on a further examination I should, it is my intention to be articulated. But previously to taking a step that will decide the nature of my avocations for life, I beg to be allowed to apply to you for the solution of some doubts that oppress me relative to the *pecuniary* recompense that a diligent pursuit of the profession of an attorney and solicitor is calculated to yield, and which doubts the learning and experience of your professional correspondents must unquestionably enable them to confirm as valid, or altogether dissipate as erroneous.

It is universally known that the fees of practitioners in this department of the law have been woefully cut down within the last few years, so much so in some branches, as to render the vocation of a common-law practitioner almost worthless of the trouble of following. Besides, the bill of costs is often considerably reduced on taxation, rendering the actual remuneration for work and labour, over and above the outlay for fees to different officers, a most contemptible sum. Added to all this, there is a large stamp-duty to pay on the indentures; and when I begin to practise, an annual sum for a certificate—burdens, the latter of which is inapplicable to other pursuits, and the former, in a minor degree, being only an *ad valorem* duty. Then it should be considered that surgeons have an almost unlimited power of charging, besides being the recipients of very handsome presents. You will naturally ask, which profession do you prefer? which do you think your mental constitution and culture most fit you for? In answer to this, I certainly think my bias is towards the law; especially if law will enable me to live like a gentleman by a *deut application* to its duties, which I very much doubt, from what I can glean out of bills of costs.

For instance, how many are there in the profession, that make 3000*l.* a year? few, very few. How many are there that make 1000*l.*? shall I be right in saying *not many*? The great majority, I imagine, get no more than from 3 to 500*l.* per annum. Considering the previous outlay, a princely income truly! And from the spirit that manifests itself, I appre-

head there will be still further reductions of fees. Who indeed can tell where they will stop? And for a last consideration, think of the numbers that are admitted annually: they will surely eat each other up! I apologise for having spun so long a yarn, but I trust you will forgive me, and be able to understand the drift of my application.

“POLYPHILUS.”

NEW RULES

OF

ALL THE COMMON LAW COURTS.

COPIES OF AND FILING AFFIDAVITS.

Hilary Term, 1838.

IT IS HEREBY ORDERED, that on and after the fourth day of this present Hilary Term, all affidavits sworn before a Commissioner in the country or a Judge of Assize on the Circuit, be read in the several Courts of Queen's Bench, Common Pleas, and Exchequer, or before any Judge of the same, or any of the Masters thereof, in like manner as other affidavits, and without obliging the party filing them to obtain copies of the same.

AND IT IS FURTHER ORDERED, that all affidavits read before a Judge of any of the said Courts, or before a Master of the same, shall be filed with the Masters of the said Courts, and be alphabetically indexed; such affidavits to be delivered to the said Masters, in order to be filed, four times in the year; that is to say, the last day of each Term.

DENMAN.	J. B. BOSANQUET.
N. C. TINDAL.	E. H. ALDERSON.
ABINGER.	J. PATTESON.
J. A. PARK.	J. GURNEY.
J. LITLEDAL.	J. WILLIAMS.
J. VAUGHAN.	J. T. COLBRIDGE.
J. PARKE.	T. COLTMAN.
W. BOLLAND.	

NEW RULE IN THE COMMON PLEAS.

PRISONERS.

Hilary Term, in the first year of the
Reign of Queen Victoria.

IT IS ORDERED, that from and after the first day of this present Term, every Rule or Order of a Judge, directing the discharge of a defendant out of custody upon Special Bail being put in and perfected, shall also direct a Supersedeas to issue forthwith.

N. C. TINDAL.
J. A. PARK.
J. B. BOSANQUET.

ATTORNEYS TO BE ADMITTED,

On the last day of Hilary Term, 1838,

By order of Court.

Name and residence of Clerk.

Grange, Richard, 35, Great James Street,
Bedford Row, and 20, Edward's Terrace,
Pentonville.

Hillyard, Charles, New Temple Buildings,
Temple, and Winchester Street, Penton-
ville.

Haydon, Samuel James Bouverie, 3, Cle-
ment's Inn; 6, Warwick Court; 11, Hand
Court; and Heavitree, Devon.

Southwood, Walter, 41, Chapel Street, and
46, Edgware Road.

Woolley, William Staff, Rye Lane, Peckham.

To whom articles assigned, &c.
James Barnaby Mills, Hatton Garden; James
Goren, Orchard Street, Portman Square;
George Metcalfe, Gray's Inn.
George Hillyard King, Tokenhouse Yard.

Zachary Turner, city of Exeter; John House-
man, Essex Street, Strand.

Charles Pitt Bartley, 30, Somerset Street,
Portman Square.

Thomas Vaudrey, Congleton; Thomas Ditch-
burn, Broad Street Buildings; Lawrence
Desborough, Size Lane.

Padwick, William, Norfolk House, Hayling
Island.
Robertson, Alexander, Berwick-upon-Tweed.
Reed, John, 63, Hatfield Street, Surrey.
Tucker, Robert, Ashcott, Somerset.
Weir, William, Manningham, near Bradford.

*The Affidavits of the following Persons were
not left at the Master's Office till the 11th
January, 1838.*

Hoss, Henry, 6, Symonds' Inn.
Howell, John, Bridgnorth.
Furner, Frederic, Brighton.

UNITED LAW CLERKS' SOCIETY.

We are glad to find that the affairs of this Society are progressing most favourably to its general interests, and we earnestly recommend all Law Clerks who are eligible to become members, to lose no time in enrolling their names. *Clerks to Attorneys, Barristers, Special Pleaders, Conveyancers, Proctors, and Clerks in the Public Law Offices* are admitted members. At a recent meeting of this institution, the following eminent names, among others, were announced as donors:—The Right Hon. Lord Langdale, Master of the Rolls; the Right Hon. Thomas Erskine, and Sir George Rose, Judges in Bankruptcy; W. G. Adam, Esq., Accountant General of the High Court of Chancery; the Hon. Sir Stephen Gaselee, Knight; Sir Frederick Pollock, M. P. &c. &c.

A correspondent who is desirous of sending a subscription to the Law Clerks' Society, is informed that donations are received at the bar of the Southampton Coffee House, or may be forwarded in a letter, addressed there, to the Secretary of the United Law Clerks' Society.

RE-ADMISSION OF ATTORNEYS,

On the last day of Hilary Term, 1838.

Ashton, Robert, Cowley Cottage, North Brixton, Surrey.

Atkinson, Joseph, Carlisle.

Boulger, Henry, 7, Pantan Square.

Bradley, George, Wellington, Salop.

Bucherfield, William Harry, Pyle, Glamorgan.

Cole, Jesse, 21, Bryanston Street, and 14, Upper George Street.

Everingham, James, Park Place, Highbury, and Seven Sisters Road, Hornsey.

Guy, Anthony, Marshfield, Gloucester.

Highmoor, James Raper, Ainderby Quernhow, Pickhill, Yorkshire.

Haynes, Thomas William, 11, Rathbone Place; 51, Ernest Street; 15, Everett Street; and Downend, Gloucester.

Horner, Thomas, Darlington, and Lead Hills, Scotland.

King, Edward, North Street, Westminster.

Miller, James, 17, Southampton Street, Strand; Englefield Green, Surrey; Walham Green, Hampton Wick.

Powell, Horatio Nelson, Chipping, Sodbury.

SUPERIOR COURTS.

Vice Chancellor's Court.

MUNICIPAL CORPORATIONS REFORM ACT.—CONSTRUCTION.

The corporation of L. resolved in May, 1835, to transfer to A., B. and C., 6500l. stock, and to divest the corporation of all power over it. The stock was accordingly transferred between the introduction of the bill for reforming municipal corporations into parliament, and the passing of it. The trusts of the stock were declared after the act passed, to be for donations to churches and hospitals in the borough of L. Held, that the stock was not divested out of the corporation by the resolution of May; that the new act impressed the corporation property with a trust, and that the appropriation of the fund to the purposes named was a breach of trust.

This was an information and bill, filed in the name of the Attorney General, by and at the relation of the present mayor and corporation of Leeds, against members of the old corpora-

tion, and trustees, to whom sums, amounting to 7000*l.* (6500*l.* 3 per cent. consols, and 500*l.* secured on turnpike tolls,) had been transferred, and against certain persons who claimed under the trusts. The transfer was alleged to have been made for the purpose of eluding the provisions of the Municipal Reform Act; and the object of the information and bill was to have it declared that such transfer was fraudulent and void, and to compel the defendants to refund to the treasurer of the present corporation so much of the said sums as had not been applied to the payment of the corporation debts. The information and bill stated, among other things, that on the 30th of May, 1835, after notice was given on the 22d of May in the House of Commons of a motion for leave to bring in a bill to regulate Municipal Corporations in England and Wales, the then corporation of Leeds met and passed a resolution to transfer the said consols and securities to the names of the defendants Wilson, Beckett, and Blaydes, and to divest the corporation of all power over them; that the bill for regulating the corporations was brought into parliament on the 5th of June, and was passed into a law on the 9th of September, 1835. That between June and September, the said stock and security were transferred, with the understanding that if the bill should not pass into a law, the said defendants should transfer them back; that on the 4th of July, the trustees received a memorial from other members of the corporation, requesting them to apply the sums to the following purposes: 525*l.* in money, to the recorder; 105*l.* to the deputy recorder for past services, (both sums were declined;) 750*l.* stock to the Leeds infirmary; 500*l.* to the House of Recovery; 250*l.* to the Public Dispensary; 1000*l.* to a subscription for a new church; and two sums of 1000*l.* each to increase the stipends of the officiating ministers of St. Mary's and Christchurch, in Leeds. By deeds of the 24th of November, to which the corporation seal was not attached, the above named defendants declared that they held the funds on trust for the above purposes, and subject thereto and to the payment of corporation debts, in trust for the corporation and their successors. The case came before the court on the 21st of March last, on a motion to have the money in the hands of the defendants, the trustees, paid into court. Upon that application an order was made as to part of the sums, according to the terms of the motion, but it was suggested that the objects of the trusts ought to be before the court. The information and bill was amended by bringing those parties before the court, and also by making defendants those members of the old corporation who sanctioned the declaration of trust above named, and it sought to make them personally answerable for the alleged mis-appropriation. The defendants therefore consisted of three classes:—those beneficially entitled formed the first; the old corporators, personally charged, the second; and one other defendant, only differing from those in the second class by

his having been one of the trustees of the original fund, formed the third class. All these defendants demurred for want of equity; and the present argument was upon the demurrers. There were three.

Sir Charles Wetherell, Mr. Knight Bruce, and Mr. Bethell, in support of the demurrers. —It was a common mistake to suppose that the act 5 & 6 W. 4, c. 76, created new corporations. The present corporations were continuations of the former, in a modified form; and all municipal corporations still possessed the common-law right of disposing absolutely of the corporate property. The new act did not take away that common-law right incidental to all municipal corporations. It was material to notice the time when the *jus disponendi* was exercised in this case, and the purposes to which the property was appropriated. It was on the 30th of May, 1835, when the new act had no existence; the bill was not even brought in, when the resolution to transfer the funds was passed. There was no law then prohibiting the alienation of corporate property, (except to election purposes). The act introduced to the House the 5th of June, did not pass till the 9th of September, and the operation of it was postponed to the 26th of December by order in council. The act was not to have a retrospective operation. Next, as to the purposes of the transfer. Was the appropriation of the corporation fund to such purposes to be held fraudulent or illegal? The power of alienation by the corporation was not affected by the 92d section of the act, which required the surplus of the borough fund to be applied for the benefit of the inhabitants. All the fund transferred in this case was surplus, and the appropriations were for the benefit of the inhabitants. This was a very different case from that of the *Attorney General v. Aspinall*.^a This was an information and bill: that was an information only. This suit was by the corporation against members of the corporation, in their individual capacity; that was against trustees of the fund raised, and against the objects of the trust. In that suit, the acts complained of were done after the act of parliament had passed: in this, the transfer took place before the bill was introduced into parliament. In the Liverpool case the corporation was largely indebted, and the new corporation would have to lay a rate on the inhabitants. In the Leeds case, there was no debt due: all was surplus. In the Liverpool case, the new council refused to avail themselves of the remedy given by the 97th section. In this the new corporation are the plaintiffs, and ought to adopt the shorter remedy given by the act,—a new remedy to enforce a new right. With respect to the form of pleading, this suit presented the anomaly of a party suing itself; it being admitted that the new corporation was a continuation of the old. If the transfer of the fund was an effectual fraud on the public, the suit should be by information alone; if it was not

^a *Ante*, p. 42.

effectual, then it should be by bill alone ; in no case should it be by information and bill.

The *Solicitor General*, Mr. Jacob, and Mr. Walker, for the information and bill.—The Lord Chancellor's judgment in the case of the *Attorney General v. Aspinall*, is decisive and conclusive. Information and bill is here the proper form of suit. The new corporation were trustees of the corporate property for the benefit of the public, who were the *cestui que trusts*; but as the public could not all come before the court, the Attorney General represented them, and joined the trustees to obtain a restoration of the corporate funds. It could not be disputed that the trustees had a right to file a bill for a restoration of the fund, which was transferred without consideration or declaration of the purposes to which it was to be appropriated. The old laws were repealed by the first section of the new act. That act impressed a trust on the corporate property. The defendants were guilty of a breach of that trust, and this court retained its ordinary jurisdiction in this, as in other cases of breach of trust. Although the transfer of the fund in this case was resolved on before the act passed, the fund was not appropriated until after it was fixed with a trust. There was in fact no actual alienation, for the corporate seal was not affixed to the deeds of declaration of trust.

The *Vice Chancellor* said, he had time during the argument to see clearly that no final or effectual alienation of the funds was made by the old corporation. His Honor then recited the allegations and charges in the information and bill, and said on these allegations and charges it appeared to him, that if the transfer of the consols actually took place, it did not alter the beneficial ownership in them; for the corporation could only divest itself of that ownership by a corporate act, and unless the corporation seal was affixed to the deeds declaring the trusts, the property was not divested out of the corporation, the resolution of May, 1835, not appearing to him to have any such operation. The trustees therefore held the 6500*l.* stock in trust for the corporation, and the present corporation was entitled to call on these trustees to transfer back the funds. The new act had not destroyed the corporation: the existence of the old corporation was continued, subject to certain modifications as to the election of officers, and more especially as to the disposal of corporate property, which, according to the 92d section, after some specific purposes were answered, was to be applied for the public benefit. There was by the act a sort of public trust affixed to that property which, before the act, might have been disposed of at the will or the whim of the corporation. The funds were by the new act to be applied to public purposes, and they were to be so applied under the direction of the new town council. The corporation in this case was merely calling for a restitution of its own property. It had been argued that the 97th section pointed out a specific mode of seeking this restitution, and that no other could be

resorted to; but he could not think that the general jurisdiction of this court to enforce a mere trust was ousted by that clause, even if the point were unaffected by any judicial decision. The statute had in some respects changed the form in which the remedy was to be sought. The property of the corporation had become public property; and it might be necessary that in future suits respecting it, the Attorney General should be a party; but if the act had not passed, and the nature of the property had not undergone this change, he should have been of opinion that the corporation might in this case have sued by bill alone. It never could have been the intention of the legislature in the 97th section, to oust the jurisdiction of the Court; for, in the first place, it was observable that the remedy provided by that clause was of a very minute and special nature, and one that could only be exercised within a limited time; but it would be singular that any alienation of corporate property, however improper, should be incapable of being questioned, if it should escape observation for the six months mentioned in that section. He could not believe that such could be the meaning of the statute. In the second place, the latter part of the section threw light upon the meaning of the whole, for it was there provided that the privy council might restrain proceedings from being called in question "under the provisions of the act," whence it appeared that the only office of the privy council was to control the specific proceedings authorised by the act, and no other proceedings. If, therefore, the court had a jurisdiction before the act passed, since it contained no restrictive words to destroy the antecedent right, the remedy provided by the statute was cumulative, and to be exercised only within a specified time, and in a certain limited form. If he had any doubt on the subject, it would be removed by the judgment of the Lord Chancellor, overruling the demurrer in the case of the *Attorney General v. Aspinall*. Could the Lord Chancellor have overruled that demurrer without admitting that the jurisdiction of this Court was not taken away by the act? Even when, as Master of the Rolls, his Lordship dissolved the injunction which had been obtained in that case in the first instance, he expressly did so in order that the defendants might do the very act which was to enable the Court, on a future day, to decide the question of jurisdiction. By overruling the demurrer his Lordship had decided the question and assumed jurisdiction. He perfectly concurred with his Lordship on the point. His opinion, then, was, that generally speaking, these demurrers must be overruled; but the case of four of the defendants, Wright, Beckett, Bradley, and Charlesworth, was alleged to stand on different grounds from the others. They were officers of the old corporation; and with reference to them, it was to be remarked that the information and bill stated that they were the individuals who carried into effect the plan or scheme for preventing the fund from coming into the

hands of the reformed corporation, and who assisted in all the proceedings regarding the fund, and were personally answerable. The allegation that they were personally answerable, would not protect the pleading from a demurrer, unless facts were alleged to bear it out. But when it was expressly stated that there were four members of a corporation who contrived and carried into effect a scheme whereby the body was illegally to be deprived of its property, there was a *prima facie* case for making them personally answerable; and the Court had in similar cases so decided. All the demurrers must therefore be overruled.

Attorney General v. Wilson and others, at Westminster, Nov. 23d and 24th; and at Lincoln's Inn, Nov. 28th and 29th, 1837.

Queen's Bench.

[Before the Four Judges.]

STEAM BOAT—LOCAL ACT.

Steam boats plying on the Thames, are within the 7 & 8 Geo. 4, c. 75, (the local act regulating the watermen's company, and boats and vessels plying between Yantlet Creek and Windsor), and are subject to the bye laws made by the court of aldermen, under the authority of that act.

The plaintiff was the master of the *Star*, a Gravesend steam boat. The defendant was a magistrate of the counties of Middlesex and Kent, and on the 19th of September, 1834, he issued his warrant, which recited that Tisdale had been convicted before him of a certain offence punishable under the bye laws of the corporation of London, for having navigated the *Star* steam boat between London Bridge and the eastern limit of Limehouse, at a greater rate than five miles an hour; and the warrant then directed a distress to be made upon the goods of the person convicted, for the penalty thus incurred. The bye law made by the lord mayor and aldermen, directed that no steam boat or vessel should navigate between those two places at a greater speed than five miles an hour, and that a master of such steam boat or vessel offending therein, should forfeit the sum of 5*l*. The bye law in question purported to be made under the authority of 7 & 8 (3. 4, c. 74, s. 87. The act was called "An Act for the better regulation of Watermen and Lightermen on the Thames, between Yantlet Creek and Windsor." The section is in the following terms: "That it shall be lawful for the Court of Mayor and Aldermen, from time to time, to make and set down in writing such rules and bye laws as they shall think proper for the government and regulation of the freemen of the said (Watermen's) Company, and their widows and apprentices, and the boats, vessels, or other craft to be rowed or worked within the limits of this act; and to annex reasonable penalties for the breach of such rules and bye laws, not exceeding the sum of 5*l*. for any one offence."

These facts were stated in a special case, in

order to take the opinion of the Court on the question whether the rules made by the lord mayor and aldermen applied to steam boats navigating the Thames.

Mr. *Clenchy* argued the case for the plaintiff in the course of last Term; and as no one appeared on the part of the defendant, it was understood that the Court, as of course, gave judgment for the plaintiff.^a The Court, however, afterwards allowed counsel to be heard, and

Mr. *Rolund* now appeared to contend that the bye law was fully authorised by the statute, and that the statute itself clearly included steam boats. A sea boat was, according to *Falconer's Maritime Dictionary*, a vessel which bore the sea well without striking its masts or rigging. It appeared therefore, that the word boat was not confined to those small vessels which were rowed in rivers with sculls or oars, but that it might be a vessel of large size, with masts or rigging. The phrase "steam boat, or steam vessel," was one which had been adopted for convenience, but which did not necessarily mean a vessel of small size. But then there was the word "vessel" in the clause; and vessel, according to *Falconer*, was a word that was given as a name to boats of different shapes which navigated the sea or rivers, but which was more particularly applicable to boats of a large size, with two masts. In *Chalmer's Encyclopedia*, the word "vessel" was described as applicable to boats which navigated the sea or rivers, of all sorts and all shapes. [Mr. Justice *Coleridge*—What is the definition of a boat in *Falconer*? You have only given us the definition of a sea boat.] That work was not in Court; but it was believed that the definition of a boat was only a vessel which navigated the sea or rivers. The words "vessel or craft," though coming after the word "boat," might be made applicable to other vessels, besides those ordinarily called boats. The narrow rule of construction contended for on the other side, did not apply to words in the ascending scale. [Mr. Justice *Coleridge*.—If your argument is right, that the words of the act include all vessels whatever, then the act would include vessels that come from beyond sea.] It would so, because such vessels, when coming within certain limits, must be put under the direction of some members of the Watermen's Company, for whose government the statute was principally made.

Mr. *Clenchy* in reply.—The rule of construction he had contended for did apply in the ascending scale. *Casher v. Holmes*,^b was a complete authority for that position. There, after an enumeration of copper, brass, and tin, the act used the expression "other metals," but the Court held that that expression did not include gold and silver, but referred to metals *ejusdem generis* with those previously named. In the present act, there was a specific mention of the western boats, which was sufficient to show, that when the legislature intended to affect a particular description of boats not usually employed on the Thames,

^a See ante, p. 180. ^b 2 Barn. & Ad. 592.

proper words were introduced for that purpose. This was clearly a penal statute, and its application could not therefore be extended by intendment.

Lord Denman.—It seems to me that this act of parliament does include steam vessels. It is true that they are not mentioned by name, but I think that they were intended to be included in the general description. The latter words of the section have an extensive operation; and when words are apparently used with their common and natural meaning, we ought to be quite clear that in an act of this kind the legislature intended to put a restrictive meaning upon them, before we give them such a meaning, and we ought to be the more careful when the object of the legislature is certain, and that object cannot be executed if we restrict the words used by the rules of a narrow construction.

Mr. Justice Littleale.—The mischief arising from the rapid navigation of this sort of vessels was what the legislature chiefly intended to guard against: it was greater than any to be apprehended from any that were rowed by the boatmen in the ordinary manner. The words "rowed or worked" are general; and a vessel is worked just as much when propelled by steam engines as when propelled by wind. I think that steam vessels were intended to be included in the general words used in the statute.

Mr. Justice Williams.—I am of the same opinion. The word vessel embraces every description of thing used for navigation on the river.

Mr. Justice Coleridge.—It is quite a mistake to consider this as a penal statute. It is, in fact, a remedial statute. That at least is its general object, and the clause imposing the penalties is the only part of it that can be considered as of a penal nature. The clause giving the mayor and aldermen power to make regulations ought not to be so considered. Should we not be doing violence to the words of the statute to say, that the words "vessel or other craft" did not include steam boats. The word "working" is a general word, and can be applied to any manner of working vessels in the river.

Judgment for the defendant.—*Tisdall v. Combe, Esq.*, H. T. 1838. Q. B. F. J.

APPEAL.—OVERSEER.

The accounts of an assistant overseer may be made the subject of an appeal to the quarter sessions.

An assistant overseer is not the servant of the overseer, but of the vestry, and is a person having the care of the poor.

In this case an appeal to the quarter sessions had been made against the allowance by two Justices of the accounts of Watts, an assistant overseer. An objection was taken that the appeal was not brought in due time. The sessions held that the appeal was in due time, and quashed the allowance of the justices in petty sessions as to two items mentioned in

the case, subject to the opinion of this Court on the question, whether an appeal would lie against the allowance of the accounts of an assistant overseer.

Mr. W. J. Alexander and **Mr. Greaves**, in support of the order of sessions.—It is clear that an appeal does lie against the allowance of the accounts of an assistant overseer. In *Rea v. Great Faringdon*,^a a rated parishioner was held entitled to inspect the accounts of the expenditure of parish monies kept by the guardians of the poor, under the 22 G. 2. c. 83, and this Court granted a *mandamus* to enforce such inspection. An assistant overseer has the same duties and liabilities as a guardian of the poor, and his accounts must therefore be equally liable to inspection and appeal. In *Bennett v. Edwards*,^b it was held that an assistant overseer, appointed under the 59 G. 3. c. 12, and having, by virtue of his office, the poor rate in his custody, is liable to a penalty for refusing to produce it to an inhabitant when lawfully demanded, according to the 17 G. 2. In both these cases, therefore, the situation of an assistant overseer was recognised to be the same in substance as that of an overseer or a guardian of the poor. According to the statement of the case here, the defendant put himself forward as a principal, for the accounts were headed with the name of "George Watts, assistant overseer," and he appeared to the appeal, and thereby admitted his liability to have his accounts called in question. *Rea v. Gordon*,^c shews, that if a man acts in a certain capacity and discharges the duties of a certain office, that is sufficient to shew that he is such an officer for the purpose at least of calling in question the validity of what he does in that office; and in *Bennett v. Edwards*, it was distinctly stated, that if the duty of keeping accounts is imposed on an officer, the right of inspecting them may follow. If the right of inspecting them, that of appealing against them must also be allowed. In *Batchelder v. Hodges*,^d it was clearly held, that the statute 17 Geo. 2. c. 38, applies to assistant overseers who have the custody of the rates, as well as to overseers,—the words of the second section being referable to the words of the first, where the expressions used are "churchwardens, overseers, or other persons authorised to take care of the poor." On every ground, therefore, it is clear that the appeal properly lay against the accounts of this defendant.

Mr. Talbot, contrâ.—The right of appeal is a creature of the statute only, and is *strictissimi juris*; and if that right is not found in the statute, it cannot be conferred by any equitable construction made by the Courts. That principle is recognised in *The King v. Surrey*,^e and *The King v. Hunson*.^f The assistant overseer is not the officer of the parish, but the servant of the overseer. That is sufficiently shewn in

^a 9 Barn. & Cres. 541.

^b 8 Barn. & Cres. 702. ^c Leach Cro. Cas.

^d 1 Harr. & Woll. 725.

^e 2 Term Rep. 504. ^f 4 Barn. & Ald. 519.

Cannell v. Curtis. In practice too it is so. The overseers are chosen, because they are men of property and substance; and they are responsible for the acts of the assistant overseers, who are in fact only their deputies. If an assistant overseer should order goods for the parish, against whom would the action lie? Certainly against the principal alone. [Mr. Justice Coleridge.—But an assistant overseer is not appointed by the overseer, but by the parish.] That may be admitted, but still the overseers are the representatives of the parish, *quoad* the management of the poor. The overseers too are appointed to keep the accounts, and the assistant overseer is merely their servant for that purpose. By the 17 G. 2, c. 38, s. 2, if the overseers do not properly keep their accounts, they may be committed. Would the justices be able under the authority thus given, to commit the assistant overseers? If not, as it is submitted is the case, then it is clear that the assistant overseer is not the principal, or the substitute for the principal, having the same powers and subject to the same liabilities; but is merely the servant of the principal, and the appeal, if any, ought to be against him alone. It is clear that a want of knowledge of the accounts would not exempt the overseers from the operation of the statute. In *The King v. The Justices of Norfolk*,^a which was a case when, from age and infirmity, the overseer had left the work of his office to be done by a third person, a motion was made for a *mandamus* to the justices to compel them to commit the overseer, and the only ground on which it was refused was, that the justices having acted on the discretionary power which the statute gave them, this Court would not interfere. *Bennett v. Edwards* proceeded upon the ground that the party there had by custom the care of the poor. Here no such proof is given, and the assistant overseer appears merely as the servant of the overseer. The appeal, therefore, cannot be maintained against the accounts of the assistant overseer, but ought to have been brought against the overseer himself.

Cur. adv. vult.

Lord Denman, C. J., on the last day of Term, having stated the question raised on the case, said:—We do not see any reason to doubt that the accounts of an assistant overseer may be the subject of an appeal. He is not, by his appointment or otherwise, the servant of the overseer, but of the vestry; and as such he is an officer entrusted by the vestry with the care of the poor, and the accounts of the parish relating to the management of the poor. The order of the quarter sessions must therefore be confirmed, and the rule for quashing it discharged.

Order of quarter sessions confirmed.—*The Queen v. George Watts*, K. B. F. J. M. T. 1837.

^s 2 Bing. N. C. 228; and 1 Hodges, 342.

^a 4 Barn. & Ald. 238.

Queen's Bench Practice Court.

ADMISSION OF ATTORNEY.—EXAMINATION.—ILLNESS.

Where illness is a ground for dispensing with the usual strictness in admitting attorneys since the new rules.

Barstow applied for leave of the Court that a gentleman, in whose behalf he moved, might be admitted, notwithstanding he had not applied for admission pursuant to the notices he had given. He had complied with all the directions contained in the new rules, had passed his examination, obtained a certificate of competency, and given his notices for application for admission on the last day of Michaelmas Term last. On the last day but one of the Term, he was suddenly taken ill, and was unable, in consequence of his continuing illness to come down to Court during the remainder of the Term. Under these circumstances, it was hoped that the applicant might be now admitted, in pursuance of the notices already given.

Paterson, J.—I think on the peculiar state of facts disclosed, he may be admitted now. This case must not, however, be drawn into a precedent, as it proceeds on the fact of the applicant's absolute illness.

Admitted.—*Ex parte Paterson*, H. T. 1838. Q. B. P. C.

ADMISSION OF ATTORNEY.—EXAMINATION.— NEGLIGENCE OF AGENT.

Where the negligence of the London agent is an excuse for not leaving the answers at the Incorporated Law Society in due time.

Barstow applied for leave of the Court, that a gentleman who was desirous of being admitted as an attorney, might be examined, pursuant to the new rules. All the notices had been given, but the answers and papers required by the examiners, had not been left in due time. This arose from the accidental negligence of the London agent, who had undertaken to take all the necessary steps for the purpose of the applicant's admission. The examiners were perfectly willing to examine him, but as the directions in question had been approved by the Judges, it was conceived necessary to apply to the Court to allow the gentleman to be examined. The terms on which the application was grounded were, that the costs of the application should be paid by the London agent.

Paterson, J.—I think that on these terms, the applicant may be examined.

Granted.—*Ex parte Rutter*, H. T. 1838. Q. B. P. C.

Common Pleas

JUDGMENT AGAINST THE CASUAL EJECTOR.— SERVICE OF PROCESS.

Service on a servant of the tenant in possession on the premises is insufficient for a rule absolute for judgment against the casual ejector, when one call only is made, al-

though the nature of the proceedings is explained to her, and she makes contradictory statements with regard to her master being at home, and although a copy of the process is stuck on the door of the house.

J. Bayley moved for a rule for judgment against the casual ejector. His affidavit alleged that the deponent had gone on the 9th January to the residence of the tenant in possession, and found the door of the house fastened. After his knocking, however, a female servant presented herself, and in answer to a question whether her master was at home, accompanied by an explanation of the object which the deponent had in calling, she first said that her master was within, but afterwards denied that he was. The deponent, on the same day, delivered to the servant a copy of the declaration and notice, and explained to her the nature of the proceedings; and on his conversing with her upon the subject, she said that she knew what it was, for that Mr. Wright (the lessor of the plaintiff) had been trying to effect service before, but could not. The deponent then affixed a copy of the declaration and notice on the door.

Tindal, C. J.—The servant may have made a mistake the first time in saying her master was at home. There was no conversation, I suppose, with the tenant in possession?

J. Bayley.—There had been none; but the circumstances, he submitted, were sufficient at all events to grant a rule nisi.

Tindal, C. J.—You will be as badly off to serve the rule nisi as the process; but still as I am inclined to think that something like trick has been resorted to, you may take a rule to shew cause.

Rule nisi granted.—*Doe d. Wright v. Roe*, M. T. 1838. C. P.

JUDGMENT AGAINST THE CASUAL EJECTOR.— SERVICE OF PROCESS.

Service of process on the wife of the tenant in possession, at the residence of the tenant, where the premises sought to be recovered consist of stables, is sufficient for a rule for judgment against the casual ejector.

Rompas, Serjeant, moved for a rule for judgment against the casual ejector. The affidavit on which he moved stated, that the premises sought to be recovered consisted of stables, and that the deponent had gone to the private residence of the tenant in possession for the purpose of serving him with the copy of the declaration and notice, and that he was informed by the tenant's wife that her husband was not at home. He then personally served her with the process, and explained it to her. It was submitted that service on the wife under such circumstances was sufficient, as her communication with her husband was established by the fact of her living in his house, and that the premises being stables, the usual objection that the service was not on the premises, was unavailable.

Tindal, C. J., was of opinion that the service was sufficient.

Rule granted.—*Doe d. — v. Roe*, M. T. 1838. C. P.

THE EDITOR'S LETTER BOX.

The several Bills in Parliament relating to the Law, remain in the same stages of progress as mentioned in our last Number, p. 206, 7.

From the Report of the case of *Tindale v. Conbr, Esq.*, in our number for 6th January, p. 189, it might seem that Mr. Justice *Vaughan* had not been fairly treated by the suppression from him of the fact of the bye laws of which he approved having been previously disallowed by the Lord Chief Justice. As this may be considered to cast an imputation upon the solicitor employed, we think it right to state that we find that the bye laws allowed by Mr. Justice *Vaughan*, were approved and allowed in 1828, when no question had been raised as to the power of making the regulations in question; and it was not until 1836 that the Lord Chief Justice was applied to; and that application had reference to other bye laws, under another act of parliament. We are further informed that no judgment was given by the Court, nor any opinion expressed as to the law on the subject; Mr. Ryland, who was to have argued the case for the defendant, being unfortunately too ill to attend the Court; and on the following day the case was ordered to stand in the special paper for the next day of taking similar cases. The further hearing is reported *ante*, p. 221.

"A Partial Sufferer" by the want of a due ventilation of the Courts, says:—It is not a little surprising that our Judges, and the Bar, should continue, to the great prejudice of their health, utterly to neglect this most important precaution: but so it is, that go into a Court where you will, (even in the depth of winter,) and you will find it unbearable. In fact, such is the impure state of the air, that we have known many persons, from staying in a Court half an hour, come away with a head-ache. What must be the effect on the health of those in constant attendance, experience must in many cases be a lamentable proof.

"An Old Subscriber" complains that the publishers of Archbold's Practice refuse to sell the first volume without being also paid for the second volume. Law books (says our correspondent,) are dear enough at any time; and he thinks it is very preposterous to make him pay beforehand for that which there is no certainty of ever receiving. We suppose the prospectus of the work will enable the subscriber to recover his money, if the contract be not fulfilled.

The Legal Observer.

SATURDAY, JANUARY 27, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agimus.

HORAT.

THE VACANT MASTERSHIP.

NOTICE OF MR. ROUPELL.

A Mastership in Chancery has become vacant by the death of Mr. Roupell; and first let us give a short notice of that gentleman, who has for a long period enjoyed the esteem and respect of the Chancery bar.

George Boone Roupell was the son of Geo. Roupell, Esq., who was many years Post-master for the Southern department of North America. At the time of the first American war this gentleman left that country, and received compensation for the loss of his office, as an American loyalist. His son accompanied him, was entered at the Middle Temple, and applied himself to the study of the law under Mr. Hollist, whose pupil he became. He was called to the bar in Trinity Term, 1790, and chose the Court of Chancery for his department. He soon came into extensive practice as an equity draftsman and a junior counsel, which he retained for a long series of years. We find him constantly employed with the great men of the last generation of the Chancery bar - Sir Samuel Romilly, Sir Arthur Pigott, Mr. Hart, and Mr. Bell; and it is only doing him justice to say, that he enjoyed not only their friendship, but the good will of all his juniors at the bar. Indeed we do not know any man who has been so deservedly popular with the profession as Mr. Roupell.

We believe that he was never ambitious of receiving a silk gown, and perhaps wisely, so far as his own interests were concerned. It is said that Lord Eldon repeatedly promised him a Mastership, to which situation the voice of the profession had long called him; but if so, he left office

without giving it to him. During the Chancellorship of Lord Lyndhurst no vacancy in the Master's Office took place; so that it was left to Lord Brougham to carry out the wishes of the Bar, and accordingly, on the 4th of March, 1831, he was appointed to the Mastership vacant by the retirement of Mr. Cox, with the general approbation of the whole profession. He has continued in office nearly seven years; and died at his seat at East Grinstead, on the 19th instant, in the 76th year of his age, leaving a widow and several children.

The duties of a Master in Chancery, especially at the present moment, are of a most important nature; and we look with no ordinary degree of interest to the person who shall be appointed to succeed him. It is not for us to venture to point out a fit person; but for the interests of the profession and the public, we sincerely trust that the claims of merit will outweigh those of interest, however high or powerful. No Master can do his duty who has not been long conversant by actual practice with the matters which are to come before him; and if ever there was a time when these considerations should be attended to, it is the present, when the complaints as to the state of the business in the Masters' offices are so loud and universal. It is of the first importance that we should have no "prentice hand" set to learn the business, but one who has been in the daily practice of equity drafting and conveyancing. The Masters in Chancery should be subject to the same rules as the Judges of the Land; and should be chosen, not on account of the number or station of their relations or "backers," but from their professional qualifications. Several gentlemen have been named, well qualified for the situation, as likely to obtain it; but

we regret to say, that we have heard others mentioned who should never have been thought of for a place of this nature. We sincerely trust that the result will be satisfactory to the profession.

BANKRUPTCY REFORM.

WE have recently^a adverted to a pamphlet of Mr. Fane, relating to the grievances of the present Commissioners of Bankrupts. This was in the shape of a letter to the Attorney General, and related chiefly to the circumstances of their having no power to punish in their court, in cases of contempt; and of their not being invited to the Bench of the Inns of Court, as a matter of course. We have already expressed an inclination in favour of the latter demand, although it is certainly to be remarked—and we have an instance of it in the present number, in the case of Mr. Roupell, that the Masters in Chancery do not, as a matter of course, receive this compliment. With respect to the former demand, Mr. Fane has published a second pamphlet in the shape of a letter to Lord Melbourne;^b and we think it right to lay before our readers a statement of the practical evils which Mr. Fane states as arising out of the want of power in the commissioners to punish in cases of contempt.

"How long" says he "Commissioners of the Court of Bankruptcy will continue to do their duty, in protecting the publick, under a state of the law, so calculated to paralyse all energy, may well be deemed matter of doubt. That they will not openly declare their unwillingness, is highly probable; for they will scarcely venture to proclaim a principle of action, or rather inaction, which might involve removal from their offices. But will they really act? will they bestir themselves? Under the superseded system, the commissioners had certain powers of commitment; but if they made the most innocent mistake, they were responsible in damages: if they committed, they could gain nothing, and might lose largely; if they did not commit, they were safe; what was the consequence?—that the commissioners openly declared, that they would not do their duty? No, they did not venture on that, they only *did not do it*. I was a commissioner under the superseded system ten years: during that time, the list of which I was a member, could

never be prevailed upon to commit a single person; although there were cases in abundance, where it was obvious that property had been concealed to the extent of thousands. Since the introduction of the new system, I have committed in three instances, and three only: in the first, the bankrupt produced the following morning from a secret pocket 2400*l*. in bank notes; in the second, the missing property was recovered; in the third, the bankrupt, on his next examination, acknowledged his intended frauds, and disclosed where his property was concealed.

"The commissioner must also take his seat with the painful feeling, that, as he cannot protect himself, so neither can he protect any other person attending his court. Even within one week, I have twice undergone that painful sensation. On the first occasion, a gentleman of eminence at the bar, and remarkable for the courtesy of his manner, was attending in my court, as counsel. Circumstances occurred, which compelled him to appeal to me for protection. I was obliged to remind him of the late case in the Exchequer, and to express my surprise, that he should appeal to me, when it was notorious in the profession, that my Lord Abinger, Mr. Baron Bolland, and Mr. Baron Alderson, had unanimously decided, that the commissioner had no power to protect either himself, or any person attending his court. On the second occasion, a solicitor, apparently a most respectable practitioner, appealed to me, stating that a person in court had just called him "a damned liar." Again I was obliged to express my regret, that the late decision of the Court of Exchequer precluded all interference on my part.

"Since writing the above, the following case has occurred:—A bankruptcy was in prosecution before me, which had every appearance of being a case of gross fraud. The bankrupt had not surrendered until several days after the usual time, and in the meanwhile much of his property had been discovered at different places, deposited in the names of third persons. A quantity of wine was still missing, and I was myself examining the bankrupt for the purpose of ascertaining what was become of it. A Mr. Dicas was in attendance as attorney for the bankrupt. It appeared to the solicitor to the fiat, and to the official assignee, that Mr. Dicas was speaking to the bankrupt in an under tone, and they appealed to me. If I had expressed an opinion, it would have been in favour of Mr. Dicas; but before I had time to speak, Mr. Dicas addressed himself to the solicitor to the fiat, and to the official assignee, in a tone of the extremest violence, to which, as was natural, the solicitor to the fiat replied. Having learnt from the Court of Exchequer that I had no power to repress such personalities, I put an end to the inquiry, and withdrew; offering, however, to adjourn the examination to the court of review, where the observance of order and decency could be compelled. Whether the parties will prosecute the inquiry there, I know not, but in the meanwhile much

^a 14 L. O. 154.

^b "A letter addressed to the Lord Viscount Melbourne, by C. Fane, Esq. one of the Commissioners of his Majesty's Court of Bankruptcy, relative to the jurisdiction of that Court in cases of contempt."

valuable time must be lost; and if the inquiry is prosecuted there, the expence will be at least two-fold, for briefs must be prepared and counsel must be retained.

"I am sure that your Lordship will do me the justice to believe, that in thus urging the necessity of arming the Commissioners of the Court of Bankruptcy with the power in question, I am influenced by no other motive, than a deep-felt anxiety to promote the public good; that my desire is, that the commissioners should possess, not that they should exercise, the power; the possession, indeed, would render the exercise unnecessary; that my wish is, that they should be furnished, not with a weapon of offence, but with a means of defence; not with a sword to wound, but with a shield to defend; in a word, that, in the performance of their duties, instead of being disturbed by constant apprehension, they may enjoy that sense of security, without which judicial equanimity cannot exist.

"The thing to be feared in all public functionaries, particularly in those who preside in public courts of justice, is, not that they will do wrong, but that they will neglect to do right: their sins, if any, will be not sins of commission, but sins of omission; the danger is, not that they will oppress—for that they cannot do without incurring public exposure and public reprobation—but that they will abstain from protecting, for that they can; do in secret, without attracting the public observation at all; while at the same time they indulge that love of indolence, which is natural to all mankind. To declare that a commissioner may be insulted for doing what is right, is to place his interest in conflict with his duty; it is his duty to be active, it will be his interest to be passive; for, by being passive, he will avoid trouble and personal annoyance. It may, indeed, be hoped, that persons, placed in public situations, will be too conscientious to allow themselves to yield to such influences; yet surely it is dangerous to put it in the power even of the most conscientious to say to himself,—“Why should I interfere to protect the publick, since the publick will not interfere to protect me?”

ON EVIDENCE OF HANDWRITING BY COMPARISON.

EVIDENCE as to handwriting formed by the witness called, on an immediate comparison, at the trial, is inadmissible.^a But Lord Kenyon allowed the signature of the defendant to several bills of exchange to be compared, by the jury, with his alleged signature to the bill on which that action

was brought.^b And in *Griffith v. Williams*,^c it was held that the general rule does not apply where the writing acknowledged to be genuine is already in evidence in the cause, and that in such case the jury may compare the two documents. And in a case at *nisi prius*, Lord Tenterden allowed the jury to compare the disputed handwriting with other documents already in evidence for other purposes.^d

In a very recent case,^e the true rule on this point was laid down by the King's Bench to be, that evidence of handwriting by comparison is not admissible, except where the writing acknowledged to be genuine is already in evidence in the cause, or the disputed writing is an ancient document.

The point has since come before the Court in the case of *Doe d. Mudd v. Suckermore*,^f where the signature of an attesting witness to a will was in dispute, and the witness, who was alive and called as a witness at the trial, admitted that certain specimens put into his hands were of his writing, and that signatures made to depositions in the Ecclesiastical Court were also his; and an inspector at the Bank, skilled in handwriting, who had gained a knowledge of the witness's handwriting by inspection of these admitted specimens before the trial, was called to prove that the attestation to the will was not in the handwriting of the witness: the evidence was held admissible by Denman, C. J., and Williams, J., and inadmissible by Patteson, J., and Coleridge, J. The subject is discussed with great learning, and all the authorities brought together in the several judgments; but as the Judges are divided, this cannot be considered a decision on either side of the question.

NEW BILLS IN PARLIAMENT.

BENEFICES PLURALITY.

(Concluded from p. 215.)

44. Course of proceeding to be adopted, in cases of non-residence without lawful cause. The bishop instead of proceeding for penalties

^b *Allesbrook v. Roach*, 1 Esp. 351.

^c 1 Crompt. & Jerv. 67.

^d *Soliten v. Yarron*, 1 Moo. & Rob. 133.

^e *Doe d. Perry v. Newton*, 1 Nev. & P. 1;

13 L. O. 283.

^f 2 Nev. & P. 16.

^a *Doe d. Mudd v. Suckermore*, 2 N. & P. 16; 1. Phill. Ev. 490, 7th ed.

under this act, or after proceeding for the same, may issue a monition, to reside and to make a return within a specified time; which return of any fact therein the bishop may require to be verified on oath before surrogate, &c. by evidence. In case of no return, or an insufficient return, the bishop may issue an order under hand and seal, to reside within thirty days; and in case of non-compliance, may sequester till the order is complied with or sufficient reasons for non-compliance stated and proved; the surplus of sequestered profits, after providing for the curate, to be applied, in such proportion as the bishop shall think fit;—1. To the payment of reasonable expenses of the proceedings;—2. To the augmentation and improvement of the benefice itself;—3. The whole or any part may be paid to the Governors of Queen Anne's Bounty. The bishop may, within six months, repay or cause to be refunded to the incumbent any portion, although paid over to the bounty board, or in case the benefice shall be under sequestration at the suit of a creditor, to the sequestrator. Incumbent may, within one month after the sequestration, appeal to the archbishop.

45. Incumbent returning to residence before the living is sequestered, shall pay all the costs, if he was absent when the monition or order issued, and proceedings shall not be stayed until payment made.

46. In order to enforce *bona fide* residence, if any incumbent, absent without lawful cause, shall return to residence in obedience to a monition or order, and again within twelve months, wilfully absent himself without leave for one month, a sequestration may issue, without further monition or order; and so on, from time to time. An appeal to lie against such sequestration as in other cases; but no stay of proceedings.

47. After a monition, issued for the recovery of any penalty exceeding one third of the value of the benefice, the whole or any part may be remitted to the incumbent, by the archbishop or bishop; the former transmitting to the Queen in Council, and the latter to the archbishop, a list, with the particulars of such cases, with final power of disallowance or variation by the Queen in Council, or the archbishop, as the case may be.

48. If the benefice remains under sequestration for non-residence *two years* one whole year, or holder incurs *three* sequestrations within two years, without relief upon appeal, the benefice shall be, *ipso facto*, void. The bishop to give notice of the avoidance to the patron, who may not present the same person, and if the patron or his abode be unknown, or out of England, notice to be twice inserted in the London Gazette, and in some newspaper printed in the neighbourhood, and the avoidance to be reckoned from the delivery or the second insertion in the Gazette.

42. All contracts for letting the house of residence on which the incumbent shall be required by the bishop's order to reside, or which may be assigned to a curate, to be void;

and any person holding possession, after the day named in the order served upon him, shall forfeit forty shillings a-day, and costs, if any. The incumbent or curate so ordered to reside, may obtain from a magistrate a warrant, under which forcible possession of the house may be taken in the day-time.

50. Incumbent not to be liable for penalties, during adverse occupation.

51. Vicars relieved from the oath of residence.

52. If an incumbent not actually residing nine months in the year, (unless performing the duty himself, having a legal exemption from residence or a license to reside out of the benefice, or out of the usual house of residence,) absents himself for *three months* altogether in the course of one year, without leaving a curate duly licensed, or approved by the bishop, or other spiritual person to perform the duty, or neglects for *three months* to notify to the bishop the death, resignation, or removal of his curate, or to nominate to the bishop a proper curate: and in all cases where, notwithstanding such notice, no curate shall be nominated within the period aforesaid two months after death, &c.; the bishop may appoint and license a curate, with such a salary as is allowed by this act. Such curate's license to specify whether required to reside in the parish; if not, the reason: but no curate shall reside more than *five* miles from the church, except in case of necessity, to be specified in the license.

53. Where the population amounts to 1,000—or the population to 300, and the annual value of the living to 300*l.*—if the incumbent is non-resident more than *three months* in the year, the bishop shall require the curate to reside in the parsonage house, if there be one, and if not, in the parish; or by license specifying special circumstances of inconvenience, allow him to reside at some other near and convenient place; if no convenient residence there, then within the distance mentioned in the last clause, the place of residence being specified in the licence.

54. Extension of the provisions of the acts 17 Geo. 3, c. 53, and 21 Geo. 3, c. 66, relating to building or repairing houses of residence; for which purpose, and also for procuring a proper site for a house, incumbent may borrow not exceeding two years income, where it amounts to 400*l.*; nor exceeding two and a half years income where it amounts to 300*l.*, and is less than 400*l.*; nor exceeding three years' income where below 300*l.*: and may mortgage the glebe, &c. for *twenty five* years, or till the principal, interest, and costs are paid; and after expiration of first year, the incumbent shall pay to the mortgagee annually, if non-resident 10*l.* per cent., and if resident, 5*l.* per cent., of the principal.

55. Power to bishop, subject to appeal to archbishop, to require incumbent of benefice above 150*l.* per annum, to borrow money as in last clause, and in case of non-compliance, to enforce by monition and sequestration; and to direct the sequestrator to mortgage, for any

shorter period, and annually to pay a larger portion of the principal, not exceeding one tenth. If, in any case of no house, or house unfit, foregoing power not exercised, bishop to state his reason in return to the Queen in council. Incumbent actually resident, but not in glebe house, not to be liable.

56. Provisions of last recited acts which compel non resident incumbents to pay ten per cent. per annum of the sum borrowed, and incumbents paying five per cent. to produce certificate of residence, repealed as to future mortgages.

57. The annual instalments of every mortgage, to the governors of Queen Anne's bounty by bishops under special acts, or by incumbents under the two last recited acts, to be in future one thirtieth part of the principal, instead of the instalments provided by the said acts.

58. Governors of Queen Anne's bounty empowered to advance, for the purposes in two last recited acts, 100*l.* to benefices under 50*l.* a-year without interest, and to benefices above that value any sum of money authorized by said acts at 4 per cent.

59. The remaining powers of the two last-recited acts extended to all mortgages under this act.

60. Colleges and other corporate bodies empowered to advance money on mortgage of benefices in their patronage, in aid of the purposes of this act, without interest.

61. Incumbent empowered, with the consent of bishop, upon the certificate of surveyor, to allow the old glebe house to remain standing, and upon the completion of a new one, to convert the former into farm house or buildings for the use of occupiers of glebe lands.

62. If glebe house, gardens, &c. inconveniently situate, incumbent empowered, with the written consent of bishop and patron, to sell them and any land contiguous thereto, not exceeding _____ acres, for such price as shall appear fair to the ordinary and patron.

63. The purchase money to be paid to the governors of Queen Anne's bounty.

64. And applied in the purchase or erection of another house, offices, &c., together with land contiguous thereto, not exceeding _____ acres, to be approved by the written consent of the ordinary and patron.

65. The said governors in the first place to pay all costs attending the sale. House so purchased to be deemed the residence house of the benefice.

66. And in case of such purchase, the powers of the act 7 Geo. 4, c. 66, extended to this act.

67. The bishop, upon the next avoidance of a benefice not exceeding 200*l.* a year, having no fit house of residence, may, upon the report of a commission to be issued by him, sequester the benefice, and after providing for the duty, apply the profits and also the amount of dilapidations towards providing a fit house of residence. Patron may nominate to the bishop a person to be instituted to the benefice, but the bishop may withhold institution until sufficient house provided. If nomination made

within the time prescribed by law, the right not to lapse on account of institution being thus withheld. If the bishop should see reason not to sequester or to withdraw sequestration, he shall state his reasons in his next return to the Queen in council.

68. Power to the bishop wherever he has reason to believe, from his own knowledge, or on affidavit, that the duties of a benefice are inadequately performed, either on account of the number or distance of the places of worship, or the distance of the incumbent's residence, or his negligence, to issue a commission to inquire into the facts, and upon an affirmative report, or if there be more than one church or chapel belonging to the benefice the bishop may require the appointment of a curate or curates; whom he may himself appoint, if the incumbent refuses or neglects to nominate; assigning, in either case a stipend or stipends not exceeding the respective stipends fixed by this act, nor exceeding, except in case of negligence, half the gross net annual value of the benefice, and this although the incumbent is in actual residence and performance of duty; but the incumbent may appeal to the archbishop.

69. Where the value of a living of which incumbent was not in possession 12th March 1836, exceeds 400*l.* per annum, and the population amounts to 2,000, the bishop may require a curate to be nominated and paid by the incumbent; and may insist upon the employment of a curate in all cases of this amount of population, whatever be the value of the living, provided there be any other source from which such curate can be remunerated; and in default of nomination by the incumbent within two months after requisition, the bishop may appoint a curate and assign him a stipend not exceeding the stipends allowed by this act, nor in any case exceeding one fifth of the net annual value of the benefice; and if the stipend is derived in whole or in part from other sources than payments by the incumbent, the curate shall not claim more than is actually specified in the nomination.

70. In case of a stipend being assigned by the bishop under this act, to the curate of an incumbent found lunatic by inquisition, the committee to pay it out of the profits of the benefice.

71. Payment may be enforced by sequestration.

72. There shall be two full services, each including a sermon or lecture, on sundays, in the church or chapel of every benefice the value of which amounts to 150*l.* per annum, and the population to 400, unless the bishop shall for good cause dispense with one; and in every benefice the bishop may enforce two full services, or any other service required by law. Not to affect the provision of act 58 G. 3, c. 45, s. 65.

73. Before the bishop licenses any curate upon application by a non-resident incumbent, he shall require a statement of all particulars, as upon an application for a non-residence license, and on application for any license for

any stipendiary curate, a declaration signed by the incumbent and the curate, that they respectively intend *bona fide* to pay and receive the whole stipend mentioned in such statement without any reduction or reservation whatsoever, such statements to be filed as in cases of applications for licenses for non-residence.

74. Curate obtaining license to pay bishop's secretary a fee of 1*l.*, and no more, besides the stamp. One declaration only (under the Act of Uniformity) shall be necessary for a curate, and one certificate of his having made it, although he is at the same time licensed to two or more curacies in the same diocese.

75. The bishop shall appoint to all curates of non-resident incumbents stipends specified in this act; and the licenses of all curates, whether incumbent resident or not, shall specify the amount of stipend. Power to the bishop summarily to determine differences respecting such stipends or their payment; and in case of wilful neglect or refusal, he may enforce payment by monition and sequestration.

76. Stipend of a curate for a benefice held by the incumbent before the 20th of July 1813, not to exceed 75*l.*, with the use of the house, or 90*l.*, without it, except with the consent of the incumbent or in case of his neglecting to appoint a proper curate.

77. The bishop shall assign salaries to curates of non-resident incumbents not in possession on 20th July 1813, according to the following scale:

In no case less than	80 <i>l.</i>
Where population 300	100
..... 500	120
..... 1,000	150

or the whole proceeds of the living, where they do not amount to these sums respectively.

78. If the net annual value exceeds 400*l.*, the bishop may assign a resident curate, serving no other cure, 100*l.*, though the population be not three hundred; and if the net annual value exceeds 400*l.*, and the population amounts to or exceeds five hundred, he may assign any larger salary not exceeding by more than 50*l.* the stipend allowed by this act for any such curate; and where the population exceeds two thousand, bishop may require incumbent to nominate two persons to be licensed as curates, and assign to each such stipend as he shall think fit, not exceeding together the largest stipend allowed by the act, except when incumbent shall consent to larger stipend.

79. In case of incapacity of an incumbent, from age, sickness, or other unavoidable cause, in which great hardship or inconvenience would arise from assigning the full stipend to a curate, the bishop may reduce the amount at his discretion, stating the fact and his reasons in the license.

80. Where the incumbent of two or more benefices, residing *bona fide* in different proportions of the year upon one or other, employs a curate to do the duty of each, interchangeably with himself, the bishop may fix any discretionary amount of stipend between

that which would be allowed according to this act for the larger benefice and that which would be allowed for the smaller; but if, so residing, he employ a curate or curates for the whole year on each living, then the bishop may reduce the stipend to any amount at his discretion.

81. If the bishop licenses any incumbent as curate of an adjoining parish, he may assign to him any stipend less, by a sum not exceeding 30*l.*, than what would be allowed to any other curate under this act; and if he license a curate to serve more than two parishes, he may assign a similar stipend to him for each.

82. All agreements between incumbents and curates, in fraud, or for a less stipend than that stated in the license, to be absolutely void, and the curate or his representatives, within twelve months after quitting the curacy or death, as the case may be, entitled to the full amount, and to recover the balance with *treble costs*, as between proctor and client, by monition and sequestration. But the sequestration not to affect the benefice, beyond the incumbency of the person liable.

83. Curate's stipend, if of the whole annual value of the benefice, to be subject to deduction to the extent of all legal charges upon the benefice, and of any other loss or diminution, not occasioned by the wilful neglect of the incumbent.

84. In such cases as last aforesaid, the bishop may allow the incumbent to retain annually any sum not exceeding one fourth of the profits, which he has actually expended in repairs necessary to keep down dilapidations for which he would be liable to his successor; and where the value of the living does not exceed 150*l.*, he may in the same manner be allowed to retain as much of the stipend, not exceeding one fourth, as he has so laid out beyond the surplus of the profits after payment of the stipend.

85. In case of non residence for four months in the year, the bishop having required the curate to reside in the house of residence, may assign to him such house and the offices and garden free of rent, together with any portion of the glebeland adjacent thereto, not exceeding four acres, at such rent as shall be fixed by the archdeacon, or by the rural dean and one neighbouring incumbent, and approved by the bishop, during his service in the cure, or the non-residence of the incumbent; and he may sequester the living till possession is given, applying the profits as in cases of non-residence, or remitting them or any part of them, at his discretion.

86. Where the curate's stipend amounts to the whole value of the living, and he is *allowed* to reside, he shall incur the same liability as to rates and taxes as if he were incumbent; in all other cases the bishop may direct the incumbent to repay him, and he may recover by monition and sequestration.

87. If the curate does not vacate the house upon three months' notice in writing from the bishop, he shall forfeit to the incumbent forty

shillings for every day of wrongful possession, to be recovered by action of debt, &c.

88. The incumbent may not dispossess the curate without the bishop's written permission, and three months notice thereof; but upon a vacancy of the living, the curate shall quit within three months after the institution of the successor, upon being required by him so to do, and having six weeks' notice from successor, or forfeit as in last clause.

89. If a curate shall quit his curacy, without three months' notice to the incumbent and the bishop, unless with the bishop's written consent, he shall forfeit to the incumbent a sum, to be fixed by the bishop in writing, not exceeding six months' stipend, to be retained out of the arrears of stipend, if any; if none, to be recovered by action of debt.

90. Unlimited discretion to the bishop to license any curate actually employed though not expressly nominated by the incumbent resident or non-resident; and summarily, but after hearing the curate, to revoke the license to any curate under his jurisdiction, and to remove him for any cause which may appear to him good and reasonable; but the curate may appeal to the archbishop.

91. In all cases of sequestered benefices, the bishop shall appoint a curate or curates, and assign stipends, not exceeding the highest stipend fixed by this act in the case of one such curate; nor where more curates, exceeding 100*l.* to more than one of them: to be paid by the sequestrator out of the profits. But not more than one curate to be appointed to a benefice with only one church and a population not exceeding 2000.

92 & 93. Curate of sequestered benefice shall be paid by the sequestrator; or if the proceeds of the living be insufficient, by the succeeding incumbent; to be enforced by monition and sequestration.

94. All grants and revocations of curate's licences to be registered, and copies transmitted; in the same manner and subject to the same penalty and the same regulations as in cases of licenses for non-residence. Incumbent to pay to the registrar a fee of ten shillings for every copy transmitted.

95. No clergyman may serve more than two churches, or two chapels, or one church and one chapel on the same day. Power to the bishop to extend it to three churches, &c., if not more than four miles apart.

96. Every thing in the act relating to bishops to extend to archbishops in their own dioceses and peculiars.

97. Exempt and peculiar benefices are to be subject, for the purposes of this act, to the archbishop or bishop, according to their locality; but if situate between the two provinces, or between two or more dioceses, the cathedral church nearest to the parish church of the benefice shall determine the jurisdiction: but archiepiscopal and episcopal peculiars, wherever situate, to remain subject in all respects to their respective archbishops and bishops.

98. All other and concurrent jurisdiction to

cease, where the act gives jurisdiction to the bishop or archbishop.

99. Sequestrations under this act, or under the act 17 Geo. 3, c. 53., to have priority; except over sequestrations founded on judgments duly signed and docketed before the passing of this act.

100. No proceeding to be had on appeal to the archbishop until security given for costs; and if decision be against appellant, the archbishop to award the amount of costs, recoverable by the bishop by action of debt.

101. Points out the regular course of proceeding, when by monition and sequestration.

102. Sequestration founded upon monition to reside not to issue until after service of order to reside.

103. No suit against any incumbent for any penalty under this act to be instituted in any other court than that of the bishop of the diocese; and at the instance of the bishop only; such penalty to be enforced by monition and sequestration; and may be applied, by order of bishop, to be registered in the registry of the diocese, towards the augmentation or improvement of the benefice, or of the house, &c.

104. Fees and costs, unpaid for twenty-one days after written demand, recoverable against ecclesiastical persons by monition or sequestration.

105. Registrar neglecting or refusing to comply with any direction of this act to forfeit 5*l.*

106. Penalties against lay or unbeneficed persons to be recovered by action of debt in any of the Courts of Record at Westminster.

107. Penalties recoverable only for offences within the previous year, ending 31st December.

108. Penalties, the application of which is not specially provided for, to go to Queen Anne's Bounty.

109. The year under the act to be the usual year.

110. Months to be calendar months, unless made up of smaller periods, and then to consist of thirty days.

111. A certified copy of the entry of any license to be evidence in all courts.

112. Affidavits, required by this act, to be made before some ecclesiastical judge, or his surrogate, or before a justice of the peace, or a master or master extraordinary in chancery.

113. The term "cathedral preferment" to comprehend (unless it shall otherwise appear from the context) every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar or vicar choral, having any prebend or endowment belonging thereto, precentorship, treasurer'ship, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church, and every mastership, wardenship and followship, in any collegiate church.

The term "benefice" to mean benefice with cure of souls and no other, (unless it shall otherwise appear from the context) and therein to comprehend all parishes, perpetual curacies,

donatives, endowed chapels, parochial chapel-ries, and chapelries or districts having churches or chapels with districts belonging or reputed to belong thereto.

114, 115, & 116. Form in which the consent of patron is to be testified where patronage is in the crown, or where the patron is a minor, idiot, lunatic or feme covert, or where the patronage is attached to the Duchy of Cornwall.

117. Annual value of benefices to be the net value in the report of the Ecclesiastical Revenues Commissioners, dated 16th June 1835, until other such returns are made; then according to the latest returns printed; and in case of no returns, the court or bishop may proceed on the best information to be procured.

118. Distance between two benefices to be computed from church to church by the nearest road, footpath, or ferry; if more than one church on a benefice, from or to the nearest; and if no church, then in such manner as the bishop shall direct.

119. Population to be computed from the latest returns at the time the question shall arise.

120. Nothing in the act to affect the jurisdiction of archbishops and bishops, except as specified.

121. Act not to extend to Ireland.

ON LEGAL EXAMINATION DISTINCTIONS.

Sir,

IN looking through the Legal Observer of the 13th instant, I was surprised to find, in your notice of the ensuing Hilary Examination, that the propriety of awarding 'distinctions,' or rewards to a few of the candidates, who pass their examination in a superior manner, should again be on the carpet with some members of the profession. I say surprised, because, since this was first spoken of, I had been given to understand that the profession generally, so far from acquiescing in, had been found strongly and laudably opposed to it.

The slovenly manner of admitting attorneys is no sooner complained of, than rules directing their examination are promulgated—rules that in practice, we are told, are admirably effecting their object. Reasonable men, when they have discovered a sufficient remedy for the cause of complaint, are satisfied—they have reached that point at which judicious beings stop; but in the legal profession, as in the rest, there are malcontents, whose thirst for change and novelty is insatiable. "True it is," they say, "that under the present practice the examiners are empowered to put any number of questions they deem proper—of any amount, in point of importance and difficulty, they think advisable, on the principles and practice of the laws of England, to a

young man just emerging from a five years' clerkship, and that without considerable application he cannot be expected to pass—considering the inadequacy of the time, to the magnitude of the task. True it is, that the probability and dread of defeat is calculated to prove an all-sufficient 'spur to prick the sides of his intent.' True it is, that the present practice has removed the former ground of complaint, and under it has been effected all that reasonable and rational men could expect or desire; yet it is equally correct, that as we cannot reform, let us change—if we are unable to amend, why, at any rate, let us alter!"

As this proposed change must on all hands be admitted to be uncalled for, whilst the examination itself is effecting all it can possibly have in view, let us at once take a glance at the practical working, and see how far it is capable of being justly acted upon, and the fairly anticipated result of its adoption.

I ask, if this half-considered suggestion should be ultimately approved, and incorporated with the present practice, would we find in the examination of legal candidates that spirit of 'fair play' that should characterize all examinations, and which every true friend of his profession would feel desirous to see here manifested? Assuredly not. Instead of finding the candidates entering the list under equally advantageous circumstances, as every one would expect where 'distinctions' are to be awarded, it would be found that many young gentlemen, unable to sacrifice more money or time, would be forced to the examination at the expiration of their clerkship, and at that examination have to contend against others, whom fortune had enabled to avail themselves of the chambers of a conveyancer and special pleader, and to devote considerable time in preparing for a struggle, the result of which, it is very obvious, would prove to a considerable extent beneficial, or prejudicial, to them in their professional career. Take it that two candidates thus circumstanced evinced a sufficient acquaintance with their profession to entitle them to their certificates; we will naturally conclude, that he whom fortune favoured with greater opportunity would be found amongst the 'few' distinguished candidates, and here would a manifest injustice arise towards the younger candidate, who, taking into consideration the disadvantages under which he had laboured, may have acquitted himself in a more creditable manner than his distinguished rival. And why?—not that he lacked ability; not that he was less persevering; but solely because he was not backed by friends with the means to aid him in the attempt to attain that superiority of which he had fallen short. 'Superior' display is expected of 'superior' education—'superior' education the result of 'superior' means—so that if this alteration should ever be tolerated, it would be found so far at variance with 'fair play,' as to be the mere aggrandiser of wealth, and oppressor of poverty—too closely resembling the "even

handed justice" of former times, to be sanctioned at the present day.

Another objection may be started—it is this: That though the Examiners may form an opinion of the merits of each candidate's performance, in many cases the examination must fail as a test of ability. The experience of every day shows us that the excitement under which many persons labour is such as to place them on most disadvantageous ground, and often wholly to incapacitate them, at the moment they should be calm and collected. If that be the case now, how much more would the anxiety be increased, if a candidate, in addition to evincing a sufficient knowledge of his profession to obtain his certificate, was called upon to shew his superiority over perhaps one hundred individuals around him? The result in many cases would be that the candidate best read in his profession,—unable to meet composedly a trial, rendered by the proposed alteration of such vital importance, and upon which his professional success may, in some instances, much depend,—will leave the arena discomfited, if not disgraced; whilst some fellow candidate, who, upon *private* investigation, would be found possessed of a tithe of the professional information, coupled with ten times the confidence, would be able to acquit himself in a 'superior' manner, and acquire that *distinction* to which his nerveless competitor was in reality entitled. It is not every man that can keep "his heart on the verge of bloody death as calm, and equal in its beatings, as when nestled from the sports of thoughtless boyhood."

But this proposed alteration is still open to attack on higher ground. Every one is conscious of the right of the Courts to be satisfied of the fitness of their officers prior to admission; but can it be shewn that they are justified in proceeding further, and by allowing 'distinctions' to be awarded to the 'few,' prejudice the *many*, by effectually certifying to the public their 'superior' ability? I question that it can. The prejudices that young professional men have too often to encounter need no augmentation.

To conclude. I have shewn this suggested 'change' to be open to strong objection, on both principle and practice. To talk of enabling the Examiners to parry off injustice, by authorizing them to take into consideration the particular circumstances of each case, would be to talk nonsense,—which, if acted upon, would place those gentlemen in a situation calling forth the sympathy rather than the envy of the profession.

It is from the tone of your remarks on this subject that I calculate upon you as an approver of my letter, and to the known independence of your publication, that I rely for its insertion.

J. N.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—NEW ORDERS.

The Master has no discretion to relax or depart from the New Orders in Chancery. The proper course is to apply to the Court for relief from an inconvenient application of them.

This was a motion to take off the file exceptions to the defendant's answer for insufficiency; and also the Master's report thereon. It appeared that the exceptions to the answer were delivered on the 16th of March last; the order to refer them to the Master was served on the 4th of April; and on the 6th, the Master's warrant was obtained for proceeding on the exceptions on the 12th of April. Both parties attended before the Master, who, on the 21st of the same month, reported on the insufficiency of the answer.

Mr. Kee, in support of the motion, said the whole proceeding was irregular, and in violation of the 5th and 12th of the New Orders in Chancery of 1828 and 1831. By the 5th of these orders, exceptions to an answer for insufficiency shall be considered as abandoned, unless the plaintiff refer the answer within fourteen days after the exceptions are delivered. The fourteen days^a expired in this case on the 30th of March, and yet the order of reference was not served until the 4th of April, on which day it was made. That was one irregularity. Again, the Master's report was not obtained until the 21st of April, seventeen days after the order of reference was made, whereas the 12th of the New Orders declared the order of reference to be abandoned, unless the party obtaining it, procured the Master's report in a fortnight from the date of the order, or the Master's certificate that further time was necessary: no such certificate was obtained in this case. The objection was raised before the Master, but he was of opinion that he had power to relax the orders. The Master of the Rolls also, before whom this motion was made and refused, seemed to think that the Master had discretion to deviate from the New Orders, under the circumstances stated in behalf of the plaintiff.

Mr. Blunt for the plaintiff, said the facts and dates of the proceedings, as stated, were admitted, and the orders were not strictly complied with. But the question was, whether the exceptions ought, under the circumstances, to be taken off the file. The petition for the order to refer the exceptions was left at the Master's office on the 29th of March, but the offices being closed during the Easter holidays, the order could not be obtained or proceeded with sooner than it was. The plaintiff's clerk in Court did all that could be done. An affidavit of the facts was laid before the Master on the 13th of April, at his desire; and the defendants attended a warrant before him on the 18th, when the Master held that under the

^a Eight days and six days. See the order.

special circumstances of the case, he might relax the strictness of the orders. The proceedings were delayed from the 18th to the 21st of April by reason of the defendant's own inability to attend. It was not open to the defendant, after contesting the sufficiency of the answer and failing, to turn round and say the whole proceeding was irregular. There is the case of *Burrell v. Nicholson*,^b precisely in point, deciding that the orders of Court are not so imperative as not, under any circumstances, to be departed from. The Master of the Rolls refused the motion, observing that the regular course would have been to apply to the Court for a departure from the orders, but as the defendant went before the Master, submitting to the irregularity, he ought not now, that the report turned out to be unfavourable to him, be heard to object.

The Lord Chancellor.—It was the duty of the party who obtained the order of reference, to proceed with it, and if he could not comply with the orders, or obtain the Master's certificate for extending the time, he should have applied to the Court. No doubt the Court could relax the orders, but the question was, whether the Master had the same power; and he was of opinion that he had not. The case to which reference was made, was properly decided: there the party made his application for time to the Court, and the Court had the power to relax the orders, though the Master had not. If he had the power to do so, the orders would cease to be rules for the regulation of business in the Master's office. It was rather discreditable to the defendant to adopt this course now, after arguing the exceptions before the Master, and he should not be allowed to take advantage of the indulgence asked by him. He would make an order, that the parties go again, at their costs, before the Master. He did not, however, refuse the application on the ground that the Master had power to depart from the orders; his Lordship wished that to be understood.

It was arranged, that no order would be made, the defendant submitting to put in a new answer, getting three weeks' time for that purpose.

Smith v. Webster, at Westminster, Nov. 17, 1837.

Rolls.

WASTE.—INJUNCTION.

The lessees of a farm cut down timber growing on the hedges, and obstructing the cultivation of the land; and also removed fences which were not necessary: Held, that they had committed waste, and an injunction was granted to restrain them.

This was a motion for an injunction to restrain the defendants from committing waste. It appeared from the statements in the plaintiff's bill, that Jonathan Passingham, farmer,

by his will, dated June, 1833, devised to Francis Sherborn and Charles Farnell, two of the defendants, and their heirs, his real estates, consisting of two farms, one called Heston farm, and the other North Hyde farm, and all his personality, upon trust to pay the rents to his wife, Elizabeth Passingham, for life, and after her decease, in trust for his children; and there was a power given to the trustees to grant leases not exceeding fourteen years, with the consent of the tenant for life; and he appointed the said Francis Sherborn and Charles Farnell his executors, and declared that his appointment of them as trustees and executors should not prevent them from becoming tenants of the farms. The testator died shortly afterwards, leaving his wife and infant children, who were the plaintiffs in the suit, surviving; and in December, 1833, a lease was granted by the defendants Sherborn and Farnell, with the consent of Mrs. Passingham, to Matthew Sherborn, the brother of Francis, of the two farms, at the rent of 377l. 19s. for Heston farm, and of 376l. for North Hyde farm; and the lessee covenanted to keep the premises in repair (after they should have been put into repair) for the remainder of the term; and the trustees and executors covenanted to put the premises into repair within twelve months; and it was declared that Francis Sherborn, who was to have an equal beneficial interest with Matthew in the leases, should be equally answerable with him for the payment of the rent. The plaintiff alleged by the bill that the rent had not been paid, and that waste had been committed by the defendants, felling trees, and doing other acts; and also that the lease had been fraudulently obtained.

Mr. Pemberton, and Mr. Rogers, having stated these circumstances, and also that the defendants had removed two miles of fences from the farms, moved for the injunction.

Mr. Temple, and Mr. Parker, for the defendants.—As to the rent, the covenant to put the premises into repair had not been performed, and the rent had been withheld on that account; but as soon as it was known that the withholding the rent produced personal inconvenience to the widow of the testator, an arrangement was entered into, under which the rent was paid, the lessee reserving the right of having the premises repaired. The trees felled were overstated in the bill, a few hedge trees only, which interrupted the ploughing, having been cut down; and as to the fences removed, the removal was a benefit to the land. In the present state of the cause, before the hearing, the defendant's answer must be taken as evidence, and that completely negated the plaintiff's case.

Lord Langdale.—Francis Sherborn and Farnell having been appointed trustees and executors by the will, Farnell did not choose to act, and the consequence was that Francis Sherborn alone acted in the execution of the trusts, and he availed himself of the provisions in the will, enabling him, although a trustee, to become tenant of both the farms. The two Sherborns admitted that they dug up the fences to

the extent of several thousand feet; they also cut down and sold timber, and this without sufficient reason, or any authority under the will. These timber trees were part of the estate limited by the will of the testator to the widow for her life, and to her daughter and her daughter's children afterwards. The defendants seemed to consider it entirely in their discretion whether they should pay the rent or not. The lessors covenanted in the lease within twelve calendar months to put the premises in repair, and the lessees say the premises are not put in repair, and that the rent agreed upon was paid in reference to that covenant. Under these circumstances, the injunction must be granted.

Passingham v. Sherbornes, Sittings at the Rolls, Dec. 13, 1837.

Equity Exchequer.

PRIVILEGED COMMUNICATIONS.

Letters between a solicitor and his client, relating to the matter which is the subject of the suit, are privileged communications, and the client is not bound to produce them for the inspection of his adversary.

This was a motion for the production of letters and other papers, admitted by the defendant to be in his possession.

Mr. Sharpe, in support of the motion, said, the bill was filed by parties claiming a legacy of 500*l.* under a will, by which so much was given to the children of Mr. and Mrs. W. The defendant was the executor of the will, and he was also the residuary legatee. He refused to pay the legacy, on the ground that the plaintiffs were not the children of Mr. and Mrs. W.; for that Mr. and Mrs. W. were not married, and marriage of the parents was a necessary condition to give the plaintiffs the character and description of children. If the plaintiffs failed in proof, the legacy would go into the residue. The defendant by his answer to the bill admitted that he had in his possession various documents relating to the subject of the suit, and also several letters received from his solicitor and others respecting the alleged marriage of Mr. and Mrs. W. These were the documents and letters now sought to be produced. The letters might contain matter relating to the marriage of the parents of the plaintiffs, and establishing their legitimacy, and not relating to the suit, nor with any reference to it.

Mr. Baron Alderson.—Letters would not be privileged communications, unless they passed between the solicitor and his client while the former was acting professionally for the latter, and referred to the subject of the suit. But if the letters which so passed related to the matter of the suit, they must be held to be privileged communications, or otherwise no man could with safety ask legal advice from his attorney. A client was bound to disclose to his solicitor all the circumstances that surrounded his case, else the solicitor would not

be able to give him sound advice. There could be no doubt that the letters in this case received, as it was alleged, from the defendant's solicitor in Ireland, did relate to the question of marriage of the plaintiff's parents in Ireland. The defendant was not therefore to be called on to produce those letters, but the other documents admitted to be in his possession he was bound to produce.

Harvey v. Kerwan, at Gray's Inn Hall, Nov. 30th, 1837.

Queen's Bench.

[Before the Four Judges.]

CONTEMPT.—ECCLESIASTICAL COURT.

Where a party, present in Court at the time, is directed by an Ecclesiastical Court to perform a penance and to pay costs, the refusal to do either is to be taken as evidence of his having been admonished of the sentence, and non-performance of it under such circumstances will subject him to process for contumaciousness.

If he is in contempt for refusal to perform one part of the sentence, which is clearly good, this Court will not enquire whether the other parts of the sentence can be supported.

Mr. Channell shewed cause against a rule for setting aside a writ *de contumace capiendo*, issued against the defendant by the Ecclesiastical Court of Peterborough for not performing a judgment pronounced against him in a suit for slander instituted by Anne Kingdon. The first objection taken to the validity of the writ was that there had not been any proper admonition. The second, that there was an insufficient description of the place where the sentence was to be carried into effect. The third, that the sentence went beyond what the Court had authority to impose, and required the defendant to express his conviction, not only that the words he had uttered were false, but that the party whom he had slandered was strictly chaste, sober, &c. As to the first of these objections, the facts were that in the month of July the defendant was cited to appear in the Court of the Bishop of Peterborough to answer Anne Kingdon on a complaint of slander. The defendant appointed one Charles Hall to appear as his attorney and defend the suit. Hall stated that he had retained one Richard Howe as proctor to appear in the Court at Peterborough and conduct the defence. Howe did enter an appearance. It was clear, therefore, that the defendant had been cited, that he had retained an attorney, and that an appearance had been duly entered. On the 10th of February the libel was put in stating the complaint: the several allegations in the bill were afterwards duly proved, and judgment was pronounced; and then came the question whether there had been a due monition of the judgment to the party required to perform it. The defendant was told what the judgment was, and was required to take out a copy of the sentence and to pay the costs.

The argument on the other side rested on the case of *Res v. Muly*,^a where it was held that a decree having been made calling on a party to perform a penance in a particular church, according to a schedule of penances there used; and the schedule was made out but not delivered to the party sentenced, he was entitled to a clear notice of the schedule before the writ *de contumace* could be issued against him. That case was distinguishable from the present, for there the defendant had to perform a penance according to the provisions of a particular schedule, of which he had not due notice; and the amount of costs he had to pay, before, by the practice of that Court, the schedule could be delivered to him, was not properly stated in the *significavit*. Here, on the contrary, the very nature of the penance was stated in the sentence, and the defendant was present in Court when that sentence was pronounced; and further, the exact amount of costs he had to pay was specified. Here, too, it was in evidence on the affidavits that the defendant was turbulent and contumacious in the Court itself; and that when the sentence was announced to him, he declared that he would never perform the penance, and that the Judge might imprison him for it, if the Judge should think fit to do so; and that he would sooner rot in a jail than pay the costs. As to the second point—that the terms of the sentence exceeded the power of the Judge, it was decisively answered by the case of *Birch v. Brown*.^b There the sentence was, that the defendant should confess that he had abused the complainant, and believed her life and conversation to be chaste, sober, and honest. That sentence was on this very objection held in this Court to be a valid sentence. The third point related to the place at which the penance was to be performed. The sentence was that the defendant should repair to the house of the minister at Brooke, and there in the presence of the minister, and in the presence of Anne Kingdon, of Brooke aforesaid, should make a declaration to this effect:—"I humbly ask pardon for the slander I have used, and promise to behave better in future; and I believe that your conduct has been strictly sober, chaste, and honest." On this subject the affidavits on the part of the defendant stated that there was no minister's house at Brooke, but that his house was at Oakham. The answer to this objection was that the parish was properly called Oakham Cum Brooke, and the mere use of part of the name of the parish could not invalidate a writ which was in every other respect perfectly regular.

Mr. J. Jervis in support of the rule.—The party here was not formally admonished, and the proceedings in Court did not dispense with the necessity of a monition: as to the second point, it must be admitted that unless the case of *Birch v. Brown* could be treated as bad law, the objection of excess in the judgment must fail; for Mr. Justice Taunton there

distinctly declared that the judge had the power to pronounce a penance in his discretion. But did not that statement proceed too far? There were several sorts of penance—not only for the punishment of the party, but for his reformation. There must be some rule as to the imposition of these different sorts of penance. The forms in Burn's Ecclesiastical Law, merely gave a denial of the truth of the charge made in the slander; but did not go to any declaration of the excellence of the life of the party. Then, as to the objection that the sentence directed the performance of the penance at a particular place: It was clear that the place chosen ought to be the vestry or the church, not the residence of the minister. In that respect therefore, the sentence was defective, whatever might be thought of the objection as to the description of the place where the house of the minister was to be found. As to the refusal to pay the costs, how could the Court tell that the costs would not be increased by the non-performance of the sentence? and if so, the party ought to have had full notice as to the sentence, and the mode of obeying it. The sentence might have been left unperformed, because the party had no proper monition as to the nature of that sentence.

Lord Denman, C. J.—The first question in this case, is whether the defendant was duly admonished. On that question the affidavits differ; but it appears that he was personally present in Court, and that the officer addressed him, and required him to take out a copy of the sentence; though the parties who swear to that fact, also state that they will not swear that he understood what was said to him on this subject, for that he was in a very violent passion at the time. But a person is not at liberty to close his understanding by acts of this sort, and then turn them to his own advantage. This, however, is not all: he knew that he had to pay costs, and he distinctly refused to pay them,—a circumstance which showed that he had attended to what was going on, and understood it perfectly well; and that circumstance is confirmed by another, namely, that he afterwards asked for time to be given him, to appeal against the sentence. Taking all these things together, we think we are bound to say that the admonition was duly given. Then the question arises, whether this writ was good in itself. But in the first instance, we must ask this question: Suppose any one of the grounds on which this writ was issued, was sufficient, as an act of contempt, to justify the writ; it is clear that the defendant must answer for that contempt. That is so with respect to costs. The Court awarded a precise sum as costs. So that whatever objection there may be to the form of the writ in requiring the defendant to go to the house of the minister, or to make any general statement, as to the good conduct of the person slandered, it is clear that the Court having the power to order the defendant to pay costs, he would incur contempt in not paying them. I do not see how he can evade that part of the

^a 3 Dowl. & Ry. 570.

^b 1 Dowl. P. C. 395.

sentence; and if not, I do not see how it can be said that the costs could be increased by his ignorance of the sentence, and his consequent non-performance of it.

The other Judges concurred.

Rule discharged, but without costs.—*Anne Kingdon v. Huck*, H. T. 1838. Q. B. F. J.

NOTICE OF APPEAL.

If an appeal is made against a borough rate, the notice of appeal must be given to the town clerk, who being for this purpose the servant and representative of the town council by whom the rate is made, is the proper person to receive notice of an appeal against it.

In this case a rule had been obtained for a *mandamus* to be issued to the defendant, commanding him to enter continuances and hear an appeal against a borough rate. The rate in question had been made under the authority of the 92d section of the 5 & 6 W. 4, c. 76. That section, after giving the council power to supply the deficiencies of a borough fund by the imposition of a borough rate, proceeds thus: "Provided, that if any person shall think himself aggrieved by any such rate, it shall be lawful for him to appeal to the recorder hereinafter mentioned, at the next quarter sessions for the borough in which such rate has been made, or in case there shall be no recorder within such borough, to the justice at the next quarter sessions for the county within which such borough is situate, or wherunto it is adjacent; and such recorder or justices respectively, shall have power to hear and determine the same, and to award relief in the premises as in the case of an appeal against any county rate." The question intended to be raised for the decision of the Court was, whether the town clerk was not the proper person entitled to receive the notice of appeal, in the same manner as the clerk of the peace for the county would be entitled to receive it in the case of an ordinary appeal against a county rate.

Mr. *Cresswell*, on shewing cause against the rule, contended, that as there were no specific provisions in the Municipal Corporation Act as to the person to whom the notice of appeal was to be given, the provisions of the 57 G. 3. c. 94, must be referred to, and the persons there mentioned, namely, the clerk of the peace for the county, and the hundred constable, were the only persons to whom the notice could properly be given.

Mr. *V. Williams*, in support of the rule, insisted, that there was no similarity between the two cases, and that no notice of appeal was necessary to the clerk of the peace for the county, or to the hundred constable, but that a notice given, as in this case, to the town clerk was sufficient.

Lord *Denman*, C. J.—I think that the recorder ought to have heard this appeal. The town clerk is the clerk of the town council—that body has the power to make the rate—and its servant is the proper person to receive notice of an appeal against that rate. We

must not look with too much nicety, to see that every person is exactly described in a statute, and that all his rights and duties are pointed out in the most accurate language: we must look to the general nature of the situation he fills, and to the principle and reason of the thing. I am sorry that any doubt should have been raised, whether any notice to such an officer was necessary in a case like the present. It is taken for granted, that some notice is necessary; and to whom could it so properly be given, as to the servant of the parties by whose authority the rate is to be made?

Mr. Justice *Littledale*.—I am clearly of opinion that notice is necessary; and I think that it must be given to the town clerk. The town council makes the rate; the town clerk is for the purpose of receiving notice of the appeal against the rate, as the representative of that body. It has been said, that the notice, if any, ought to be given to the clerk of the peace, or to the high constable, according to the provisions of the 57 G. 3, c. 94, s. 2. I do not agree with that argument. Some parts of the old statute are inapplicable in a borough. I think that in a borough, the town clerk is the proper person to whom to give notice of an appeal against a rate made by the town council.

Mr. Justice *Williams*.—I am of the same opinion. I think that the town clerk in a borough most approximates to the officer to whom a notice of appeal in a case of a county rate must be given.

Mr. Justice *Coleridge*.—I think the act requires that notice should be given, and that proper notice has been given here. In the case of the county rate, three sets of persons are mentioned as entitled to notice, "the parties against whose rate the appeal is to be made, the clerk of the peace for the county, and the hundred constable." These provisions cannot be imported literally into the Municipal Reform Act. We must comply with an act, not in its terms merely, but in its substance. The person to receive notice, in one case, is the town clerk; in the other, the clerk of the peace and the hundred constable. Now the reason in both instances, is the same with respect to this matter of notice; for the officers to whom notice is to be given, are in the case of the county rate, the servants of the county justices who make the rate; and in the case of the borough rate, the town clerk, who is the servant of the town council—that body, for the purpose of rating, standing in a borough in the situation of the justices in a county. The authority which ordinary justices of the peace exercise in a county, is given to the town council in a borough. To whom then is notice of appeal to be given, but to those with whom the making of the rate rests? The town clerk is the servant of those who make the rate in a borough; and a notice to him is a correct and proper compliance with the provisions of the act.

Rule absolute.—*The Queen v. The Recorder of Caermarthen*, H. T. 1838.

Queen's Bench Practice Court.

STRIKING ATTORNEY OFF ROLL.—PRACTISING IN PRISON.

Where the Court will make a rule absolute for striking an attorney off the roll, on the ground of his practising in prison, although no cause is shewn.

Ogle applied to make a rule absolute on affidavit of personal service on the person against whom the application was made under these circumstances. The present rule required the person in question, who was an attorney named Wright, to shew cause why he should not be struck off the roll on the ground of his having practised while a prisoner, contrary to the provisions of 12 G. 2, c. 13. The fact of practising was distinctly sworn to; and it also appeared from affidavits sworn by Wright in a cause wherein he had practised during his imprisonment. The rule had been obtained in the last term, and was drawn up to shew cause on the second day of this term. This was the fourth day of the term, and no intimation had been given that Mr. Wright intended to shew cause; and, therefore, it was presumed that the rule might be made absolute on affidavit of service in the ordinary way. It was to be observed that the person in question was now a prisoner in the Queen's Bench prison, and the difficulty, if any, was on that account.

Patteson, J.—I do not think that makes any difference. If he has given no intimation that he intends to shew cause, and he does not now appear, you may make your rule absolute.

Rule absolute.—*In the matter of Wright*, H. T. 1838. Q. B. P. C.

RE-ADMISSION OF ATTORNEY.—NOTICES.

Where the rule respecting re-admissions is not complied with as to leaving notices before term, the Court will allow them to be given during term.

Hance moved for liberty to leave the necessary notices for the purpose of re-admission pursuant to the new rules at the Master's office, now instead of before term, as the provisions of the rule required. Directions had been given by the applicant to his London agent, to give the necessary notices for the purpose of re-admission; but from the negligence of that gentleman, the notices had not been given. Under these circumstances, as the neglect was not the fault of the gentleman now applying, it was hoped that the notices might now be given.

Patteson, J.—The provisions of these rules ought by this time to be known by the different members of the profession. The Court must enforce them strictly at some time or other. But as I have already granted such an application as this, on a former day, the present application may be granted.

Granted.—*Ex parte Molesworth*, H. T. 1838. Q. B. P. C.

RE-ADMISSION OF ATTORNEY.—AFFIDAVIT.—LACHES.

The Court will allow the usual affidavit made previous to re-admission of an attorney to be filed at a day subsequent to the strict time, where the omission arises from inadvertence.

Butt moved for leave to file the usual affidavit with the clerk of the Chief Justice in the case of an attorney who was desirous of being re-admitted *nunc pro tunc*. The applicant had complied with the rule in delivering a copy of his affidavit to the Master and the Secretary of the Law Institution. All the object of the rule in giving notice had consequently been attained.

Patteson, J.—It is very extraordinary that people cannot read a simple rule, and comply with its directions. These indulgences are rendered necessary by the carelessness of those who ought to make themselves acquainted with the directions of the new rule.

Butt.—The omission is only the result of mere inadvertence.

Patteson, J.—The affidavit may be filed *nunc pro tunc*; but it is difficult to ascertain when these rules are to be understood.

Leave given.—*Ex parte Green*, H. T. 1838. Q. B. P. C.

Common Pleas.

JUDGMENT AGAINST THE CASUAL EJECTOR.—SERVICE.

Where the tenant in possession has become a bankrupt, service of the declaration and notice on the messenger of the Court of Bankruptcy, who is in possession of the premises, and on the official assignee, is sufficient for a rule for judgment against the casual ejector.

W. H. Watson moved for a rule for judgment against the casual ejector. The affidavit stated that the declaration and notice were addressed to Henry Mann and Latimer West, on whom the service was regular, and also to Charles Collins, John Palmer, and George Gibson, who were the assignees of the tenant in possession, George Sanders Heywood, who was a bankrupt. On the deponent going to the premises for the purpose of serving the tenant in possession, a person who represented himself as a messenger of the Court of Bankruptcy, and who stated that he was in possession of the premises under a *stat* of bankruptcy issued against the tenant, addressed him, and the deponent effected a personal service on him. He afterwards also personally served George Gibson, the official assignee. This, it was contended, was sufficient, without service on the other assignees.

Tindal, C. J., was of opinion, that the rule should be granted, the service being reasonably good.

Rule granted.—*Doe d. Baring v. Roe*, H. T. 1838. C. P.

EJECTMENT.—TIME FOR MOVING FOR JUDGMENT.

The Court will grant a rule nisi for judgment against the casual ejector, where the attorney of the lessor of the plaintiff has received instructions to apply for the rule in due time, but has neglected to do so, not being aware that the rule in this Court as to the time of moving differed from that of the other Courts, and when there is reason to believe the defendant will not shew cause.

Ogle, on the 19th January, moved for a rule for judgment against the casual ejector. The motion should, according to the practice of the Court, have been made within the first four days of term; but it was hoped that under the circumstances disclosed in the affidavit on which the motion was made, a rule nisi would be granted. It appeared that the attorney for the lessor of the plaintiff had been employed to take the proper steps in the action in abundance of time, but believing the practice of this Court to be similar to that of the other Courts, he neglected to instruct counsel to move until Wednesday the 17th January. The Court having on a former occasion said that it was owing to an inadvertence that the rule in this Court was not assimilated in this respect to the practice of the other Courts, it was submitted that no great hardship could arise, as the lessor of the plaintiff was willing to submit to such terms as the Court might think reasonable.

Tindal, C. J., pointed out that in the event of the rule being granted the defendant would be eventually saddled with a greater amount of costs than would otherwise be necessary—

Ogle said that there was no reason to suppose that the defendant would shew cause.

The Court granted a rule nisi.

Rule nisi granted.—*Doe dem. Davis v. Roe*, H. T. 1838. C. P.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to Children of tender age. Mr. Serjt. Talfourd.

[This bill stands for second reading on the 14th Feb.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[Leave has been given to introduce this Bill.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy. Mr. Aglionby.

[This bill is now in Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts. 14th Feb. Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb. Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

LAWS OF PROPERTY.

To improve the Tenure of Copyhold and Customary Lands. Attorney General.

To alter and amend the Law relating to the Mortgages of Ships and Vessels.

Mr. G. F. Young.

[This bill stands for second reading on the 2d Feb.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland. Mr. Lynch.

[This and the previous bill stands for second reading on the 21st Feb.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading the 28th Feb.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for second reading.]

To amend the 6 & 7 W. 3, for facilitating the Inclosure of Open and Arable Fields in England and Wales. Lord Worsley.

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on Feb. 7th.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges. 12th Feb. Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime. Mr. Barneby.

[The third reading of this Bill is fixed for the 9th Feb.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales." 8th Feb. Mr. Harvey

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the law for the trial of Controverted Elections for Returners of Members to serve in Parliament. Mr. Butler.

[This bill has been brought in, and is now in Committee.]

To regulate the times of Payment of Rates and Taxes by Parliamentary Electors, and to abolish the Stamp Duty on the Admission of Freemen. Lord John Russell.

[This bill is in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament. Mr. Hume.

[This bill stands for second reading, 19th Feb.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

Mr. Warburton.

[For second reading 5th Feb.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee]

To establish Councils for the Management of County Rates in England and Wales.

Mr. Hume,

[For second reading, Feb. 19.]

PROPOSED NEW REGULATIONS AS TO PRIVATE BILLS.

Mr. Paulet Thomson has given notice of a motion, that no private bill be read a second time until six days after a breviate thereof shall have been laid on the table of the House, and have been printed.

That such breviate shall contain a statement of the object of the bill, a summary of the proposed enactments, and shall state any variation from the general law which will be effected by the bill.

That the Speaker be authorized to give such directions as shall seem to him best for carrying into effect the above resolutions.

HILARY TERM EXAMINATION.

It appears that 103 Candidates attended on the 24th instant to be examined; 95 received Certificates enabling them to be admitted this Term; one of them withdrew during the Examination; on account of illness; and the remaining seven have not passed at present.

We shall probably give some further particulars next week.

THE EDITOR'S LETTER BOX.

"A Constant Reader" should recollect that we have many tastes to please, and that the space afforded to the subjects he refers to, is very limited and occasional.

The communication of a clerk to a country bench of magistrates, will probably appear next week.

Although we cannot insert the Queries, which are still sent us, in the shape proposed, we by no means wish to discourage the communications of the junior members of the profession; but suggest that they be put in the form of disputed points of law or practice, accompanied by reference to such authorities as exist on the subject. This will be a useful mode of stimulating research, and render the discussion more important. The Questions put at the several Examinations afford the best exercise for our younger class of readers. The Hilary Term Questions appear in the Monthly Record.

The Legal Observer.

MONTHLY RECORD FOR JANUARY, 1838.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

LEGAL CHRONOLOGY OF 1837.

January.

A new rule was made by the Court of Exchequer of Pleas, relating to attachments against sheriffs.

23.—The examination of candidates for admission on the roll of attorneys took place this day at the Incorporated Law Society. Of the 126 who were examined, 119 passed, and the remaining 7 were postponed.

31.—Parliament was opened by commission.

February.

7.—Lord Denman decided at Nisi Prius, in the case of *Stockdale v. Hansard*, that a publisher of a libel was not protected by acting under the direction of the House of Commons.

The bill for abolishing the property qualification of members of parliament, was negatived by a majority of 29: there being 104 for it, and 133 against it.

16.—A committee of the House of Commons reported that the Lord Chancellor's commitment of Mr. Charlton was legal. See Vol. 13, p. 426.

23.—New orders in Chancery were issued, altering the fees in the masters' and register's offices. See Vol. 13, p. 356.

24.—Thomas Coltman, Esq. King's Counsel, and a Benchet of the Inner Temple, was appointed one of the Judges of the Court of Common Pleas, in the place of Mr. Justice Gaselee, who retired.

The following gentlemen were promoted to the rank of King's Counsel:—

Mr. John Evans and Mr. George Chil-

ton, of the Oxford Circuit; Mr. B. Andrews, of the Norfolk; and Mr. R. B. Crowder, and Mr. F. N. Rogers, of the Western.

The following Bills relating to the Law were introduced in the course of this month.* Lord Brougham, for establishing local courts. Lord Langdale, to amend the Law of Wills. The Attorney General, to abolish arrest, and amend the law of debtor and creditor. Captain Pechell, to extend the jurisdiction of Sheriffs' Courts. Mr. Roebuck, to establish local courts. Mr. Serjeant Goulburn, to abolish useless offices in the Common law courts, and consolidate the offices. Mr. Pryme, to abolish grand juries. Mr. Tooke, to amend the law of Attorneys and Solicitors as to admitting graduates, and regulating the fees of examination and admission. Mr. Serjeant Talfourd, to amend the law of copyright. Mr. Mackinnon, to amend the law of patents. The Attorney General, for the better registration of voters. Mr. Hume, for regulating the expenses of elections. Mr. C. Buller to amend the law of controverted Elections. Sir William Molesworth, to alter the law as to the qualification of members of parliament; and Mr. Hume, to extend the suffrage of householders. The Attorney General, to amend the municipal corporation act; Sir E. Wilmot to authorise courts of session of the peace to reserve points of law for the opinion of the judges. Lord John Russell, to suspend the marriages and

* These annual statements of law reform will probably be found useful in after times as well as the present.

registration acts; Mr. Wortley, to establish assistant recorder's courts; Mr. A. Trevor, to amend the law as to offences against the person; and Mr. Hume, to regulate county rates.

March.

10.—The Commissioners on Criminal Law made their third report. See Vol. 13, p. 513.

13.—New regulations were made relating to parliamentary agents by the Speaker of the House of Commons.

The following bills were introduced into parliament in the course of the present month:—Mr. C. Buller, to regulate the keeping of the public records. Mr. Aglionby, to facilitate the recovery of tenements; Mr. O'Connell, to amend the law of libel; Mr. Tooke, to regulate the fees of sheriffs, undersheriffs, and their officers; the Lord Chancellor, to extend the power of granting commissions to take affidavits in Scotland and Ireland; Mr. Hardy, to amend the law of bribery at elections.

April.

Twelve members of the committee of management of the Incorporated Law Society, were appointed examiners for the ensuing year, both in Chancery and Common Law.

Mr. Ewart's motion for leave to bring in a bill to abolish the law of primogeniture in cases of intestacy, was negatived, there being 21 votes for, and 54 against the bill.

The county rates bill was thrown out, there being only 84 in its favour, and 177 against it.

The following bills were brought in:—Lord Abinger, to amend the limitation of real actions act. Lord J. Russell, to amend the marriage and registration act. Lord John Russell, to restrain the holding of benefices in plurality.

Lord John Russell brought in nine bills relating to the criminal law: namely, forgery; offences against the person; robbery; burglary; piracy; burning buildings and ships; punishment of death; transportation; pillory; Mr. Elphinstone, for extending the uniformity of process act; Mr. Mackinnon, to amend the law regarding turnpike trusts.

May.

1.—The Easter term examination of articulated clerks took place this day, when 104 candidates received their certificates of fitness, and two were postponed.

Mr. O'Connell's bill for altering the law of libel was thrown out.

5.—New orders in Chancery were made for better regulating the hearing of causes, &c. See Vol. 14, p. 19.

A bill to repeal so much of the reform act as makes the registration conditional on payment of rates and taxes, was thrown out. The same result attended a bill as to the final register of electors.

The new bills relating to the law introduced this month, were the following: Mr. Serjeant Talfourd, to alter the law as to the custody of infants. Mr. Solicitor General, to regulate the expense of coroners' inquests. Mr. Warburton, to repeal the usury laws on bills of exchange. Bills were also brought in as to costs on prosecutions; the application of highway rates to turnpike roads; the regulation of the times of payment of rates and taxes by parliamentary electors; and by the Solicitor General, to amend the bankrupt laws as to country fiats.

June.

New orders were made in the Court of Equity Exchequer, relating to setting down causes, opening the offices, serving notices, the signatures to answers, copies of papers, &c. See Vol. 14, p. 95.

A new rule was made in all the Common Law Courts, regulating the hours of attendance at the offices. See Vol. 14, p. 104.

5.—The examination of articulated clerks took place this day, and five were subsequently re-examined. On the whole, 101 received their certificates, and two were deferred.

By a new rule of the Courts of Law, the fees for the keys of the Treasury in vacation were abolished. See Vol. 14, p. 118.

20.—His Majesty King William the Fourth died at Windsor, at twelve minutes past two o'clock, A. M., and was succeeded by her present Majesty Queen Victoria.

The bills of this month were the following:—To amend the common fields inclosure act; to establish small debt courts in certain boroughs; to regulate the boundaries of boroughs; to vest the Rolls estate in the Crown; to provide for inclosure awards; charters to trading companies; and the Central Criminal Court.

30.—The royal assent was given to the following law bills:—Registration and marriages; turnpike act continuance;

recorders' courts; shire halls; pillory abolition; Bristol court of requests.

July.

The royal assent was given to the following bills:—

- 3.—Law of wills; limitation of real actions.
- 12.—Common law offices; costs on prosecutions; metropolis police; Rolls estate.
- 13.—New standing orders were made by the House of Commons relating to private bills.
- 15.—The royal assent was given to the following bills: Lords justices; tithes commutation; attorneys and solicitors; sheriffs' fees; coroners' expenses.
- 17.—Bills of exchange; municipal corporations: letters patent to trading companies; forgery: offences against the person; burglary; robbery; burning houses, &c.; piracy; transportation; punishment of death; Central Criminal Court. For the titles of the acts of 1837, see Vol. 14, p. 301.
- 17.—Parliament was prorogued by the Queen in person, and on the same day dissolved.

November.

- 15.—The new parliament assembled.
- 16.—The examination of candidates for admission as attorneys took place at the Law Society. Four were postponed, and 99 received their certificates of fitness.
- 21.—Captain Pechell again proposed his bill to extend the jurisdiction of the sheriffs' courts, but withdrew the motion.

The motion of the same honourable member for altering the liabilities of innkeepers, &c. was negatived, there being 32 for, and 97 against it.

- 28.—Mr. Pryme's motion for the abolition of grand juries was negatived: for the bill 26; against it 196.

The following bills were brought into parliament this month:—The law of debtor and creditor and abolition of arrest, by the Lord Chancellor; to amend the law of controverted elections, by Mr. Buller; commitment of insane persons suspected of criminal intentions, by Mr. Barneby; for the relief of municipal officers in taking oaths: and for the application of highway rates to turnpike roads.

December.

- 5.—A long debate took place in the House of Lords on the abolition of the imprisonment for debt bill, which was referred to a select committee. See p. 97, *ante*.

Sir Edward Sugden's motion to suspend the operation of the wills act was negatived.

- 20.—The new table of fees in the Common Law Courts was signed by the Judges. See p. 148, *ante*.

The new table of sheriffs' fees was also signed by the Judges. See p. 153, *ante*.

The law bills introduced this month were:

To facilitate the recovery of possession of tenements—by Mr. Aglionby. To render the owners of small tenements liable for rates; To remove doubts as to summoning juries at adjourned quarter sessions; To regulate the time of paying the rates of parliamentary electors—by Lord John Russell. To amend the law of common fields inclosure—by Lord Worsley. To amend the law of copyright—by Mr. Serjeant Talfourd. To provide for the access of parents to children of tender age—by the same. To enable tenants for life to make improvements and charge the inheritance—by Mr. Lynch. To enable tenants for life and mortgagors in possession to grant leases, and make exchanges and partitions, in Ireland—by Mr. Lynch. To alter the law of mortgages of ships—by Mr. G. F. Young. To enable married women to pass interests in personalty—by Mr. Lynch. To regulate the expenses of elections—by Mr. Hume. To amend the law of qualification of members of parliament—by Mr. Warburton.

Notices were given of several other bills, not brought in.

QUESTIONS AT THE EXAMINATION, HILARY TERM, 1838.

I. PRELIMINARY.

Where did you serve your clerkship? State the particular branch or branches of the law to which you have principally applied yourself during your clerkship. Mention some of the principal law books you have read and studied.

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

What are the different writs for commencing actions, and under what circumstances are they respectively applicable?

In a joint action against several defendants, can you insert all the names in one writ, or is there any number of names to which you are limited?

Can a declaration in ejectment be served on the wife of the tenant under any and what circumstances?

When the tenant cannot be met with, may a declaration in ejectment be served on any one of the family, without any thing further being done?

When may a trial be had before the undersheriff?

Is it necessary to serve a witness with copy of a subpoena personally, or will it be sufficient to leave it at the dwelling house?

What is the meaning of the term "avowry"?

What do you understand by the expression of "cattle levant and couchant"?

If a witness in a cause be about to sail on a distant voyage, is it advisable to detain him here till the trial, or is there any other way of obtaining his testimony?

If a document is to be produced at a trial, should the expense of taking a witness to prove it be incurred, or is there any way of avoiding that expense?

Where a traveller is preparing to depart from an inn without paying his bill, may the landlord detain either his person or baggage until payment?

The property of a traveller at an inn is stolen by some person unknown, without any imputation of connivance or neglect in the landlord or his servants. Is the landlord liable to make good the loss?

When a warrant of attorney is executed by a person in custody, is anything necessary to be done beyond what would be necessary if he was not in custody?

Is it necessary that a notice to quit should in all cases be in writing?

Does a half year's notice to quit, refer to any particular period of the year of the tenancy?

III. CONVEYANCING.

What is a corporeal, and what is an incorporeal hereditament? and how are they respectively conveyed.

What is an escrow?

To whom will land, held according to the custom of Borough English, descend?

To whom will land, held according to the custom of gavelkind, descend? and where does that custom principally prevail?

What are the formal parts of a deed?

What is the difference between an use and a trust?

What requisites are now necessary for the due execution of a will devising real, and what of a will bequeathing personal estate? and from what period have such requisites been necessary?

What are the essential points to be attended to in the examination of an abstract with the title deeds?

What is a voluntary settlement? and can it be defeated in any and what manner?

Is there any, and what, advantage to a purchaser in taking an assignment of outstanding terms to trustees for the purchaser in trust to attend the inheritance, over a general declaration that all persons, in whom outstanding terms are vested, shall stand possessed of them in trust for the purchaser?

A. makes a mortgage to B., and afterwards agrees to grant a lease to C. By whom should the lease be granted?

Where there are three mortgagees, can the third in any and what manner protect himself against the second? and will the fact of his having had notice (when he advanced his money) of the second mortgage interfere with such protection?

An estate is granted to A. for 1000 years, subject thereto to B. for life, remainder to C. in tail, with reversion to D. in fee. To whom should the term be surrendered for the purpose of merging the same?

A mortgagee in fee dies intestate. In whom do the estate and money vest?

If a purchase deed be executed under a power of attorney from the vendor; in whose name should it be executed, and what is necessary for the purchaser to consider?

IV. EQUITY AND PRACTICE OF THE COURTS.

What are the several modes by which a defence may be made to a suit in equity?

What are the cases in which a bill in equity for an account will lie?

On an application for an injunction, will the omission by the party making such application to state fairly all the circumstances within his knowledge material to the case, involve any, and if any, what particular consequences?

If a plea be filed which, though good in point of form and substance, is untrue in fact, what course ought a plaintiff to take thereupon?

What is the ordinary rule of the Courts of Equity as to the place where, and the person with whom, documents scheduled to an answer will be ordered to be lodged for the inspection of the plaintiff?

Under what circumstances will the Courts of Equity relax the ordinary rule as to the place where, and the person with whom, documents scheduled to an answer are to be lodged for production?

If part of a book scheduled to an answer relates to the matters in question in the suit, and part does not so relate, in what way, and under what circumstances, will the defendant be protected from producing the irrelevant part?

For what period of time after notice of a witness being under examination before the Examiner of the Court of Chancery, must the party examining such witness keep him in town for the purpose of being cross-examined?

If a party omit to avail himself of the time allowed him for cross-examination referred to in the last question, is he thereby pre-

cluded from such cross-examination altogether, or can he on any, and what, terms still procure such cross-examination?

Give instances of persons who, in a suit in equity, praying for a receiver, are disqualified from being appointed such receiver.

What are the several steps which are necessary to be taken by the solicitor of a party complaining of a decree of the Master of the Rolls, or the Vice-Chancellor, in order to obtain a rehearing by way of appeal before the Lord Chancellor?

In a suit in the Court of Chancery, is there, or is there not, any difference in the effect of the common injunction to restrain proceedings at law, arising out of the extent to which those proceedings at law have gone at the time when the injunction is obtained? If so, state precisely in what that difference consists, and under what circumstances it arises.

What are the modes by which the execution of deeds, or the handwriting of letters may, according to the ordinary rules of Courts of Equity, be proved for the purpose of being given in evidence on the hearing of a cause?

Where, by the answer of a defendant, the validity of a deed relied on by the plaintiff is impeached on the ground of fraud, does or does not this circumstance form any, and if so, what exception to the general rule referred to in the last question? If so, how must such a deed be proved by the plaintiff? and give the reason why.

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

Have the commissioners any, and what, controul over the choice of the creditors' assignees?

State some of the cases in which a bankrupt's certificate will be void.

Under what circumstances is a bankrupt's certificate not absolutely void, but liable to be recalled?

If a person become bankrupt a second time, or after having compounded with his creditors, or been discharged under the Insolvent Debtors' Act, to what extent will his certificate under the second fiat, or the fiat after such composition or insolvency, avail him?

Have the assignees under such fiat, any and what rights, consequent on the bankrupt's non-payment of 15s. in the pound?

What estate do the assignees of a bankrupt take in freehold property of which he is seized in right of his wife?

If the wife of a bankrupt be entitled to dower, can she be compelled by the assignees to release it? and if so, in what manner, and on what terms?

In what event does a bankrupt lessee cease to be liable for the non-performance of the covenants of his lease?

If a creditor hold a bill of exchange as collateral security for a defendant, which at the

time of the bankruptcy is less than the bill, what proof can be made against the estate of the parties to the bill, they being bankrupts? and what dividends will he be entitled to receive?

If a verdict be obtained against a defendant, who becomes bankrupt before the taxation of costs, what proof can the plaintiff make under the fiat in respect of his verdict?

Is any, and what remedy, open to creditors to sustain a fiat, if, after adjudication, the petitioning creditor's debt be found to be insufficient to support it?

Where a bond or other debt is assigned, what is necessary to be done to make the assignment effectual, in case of the bankruptcy of the assignor?

Under what circumstances will an application by the bankrupt to annul the fiat against him be entertained, after he has obtained his certificate under it?

Under what circumstances will such an application by a creditor be entertained?

What effect has the appointment of assignees on the rights of the Crown?

VI. CRIMINAL LAW.

Is the real estate of a person convicted of felony affected in any, and what manner?

At what age are infants amenable to the Criminal Law; and is there any, and what, difference in respect of capital crimes, common misdemeanours, or other offences?

In what cases are married women protected from punishment for criminal offences, and when are they not so protected?

Can an accessory to an offence be tried, in any, and what cases, before the principal offender?

What acts constitute the offence of larceny?

What is the difference between an actual and constructive taking in larceny?

For what offences is the punishment of death still liable to be inflicted?

Can a count for felony and misdemeanour be joined in one indictment?

What is traversing an indictment? and in what cases is a party entitled to traverse?

What acts constitute the offence of simony? and what is the punishment? and is there any exception in favour of any, and what persons, and on what condition?

Is it an offence to compound a felony, a misdemeanour, or a criminal information? or any, and which of them?

Is an attorney liable to any, and what punishment, for giving notice that criminal proceedings will be taken unless his client's demand be settled?

State the nature of the offence of champerty, and its punishment.

What is the mode of obtaining security for the good behaviour of a person suspected of intending to commit an offence?

Is a person who has been convicted of perjury, or subornation of perjury, and has received the Queen's pardon, a competent witness?

REMARKABLE TRIALS.

THE DOUGLAS CASE.

LADY JANE DOUGLAS, sister to Archibald Duke of Douglas, became remarkable in the legal annals of Scotland by her intimate connection with the celebrated "law plea," so well known as the Douglas cause. Lady Jane, in consequence of the interruption of a nuptial agreement which was all but concluded between her and the Earl of Dalkeith, who was afterwards Duke of Buccleugh, resolutely rejected all offers of marriage till much advanced in life; but in August 1746, being then forty-eight years of age, she was secretly married to Mr. Stewart, afterwards Sir John Stewart of Grantully. Mr. Stewart was a younger brother, of no fortune, and he had no profession by the fruits of which he could hope to maintain his lady in any degree equal to her high rank. Their whole resources consisted of an allowance of 300*l.* per annum, made to Lady Jane by her brother the duke, with whom she was, at the time of her marriage, on bad terms.

This misunderstanding with her brother was the reason assigned by Lady Jane for keeping her marriage secret; and, the more effectually to conceal it, she and her husband went abroad a few days after their marriage. They resided abroad, principally in France, from 1746 till the end of December 1749. At the latter date they returned to this country, and took up their residence in London. They brought with them two male children, of which they gave out that Lady Jane had been delivered in Paris, at a twin-birth, in the month of July in the year 1748. When they came to London they were in the deepest distress for want of money, their only resource, the allowance from the Duke of Douglas, having been stopt in the month of July 1749, before which time her marriage with Mr. Stewart had been made public. In addition to their misery arising from this, Mr. Stewart was heavily involved in debt, and totally without the means of paying his creditors, who threw him into jail. In this appalling situation some of the friends of her happier days applied to government on behalf of Lady Jane, and obtained a pension for her of 300*l.* per annum. By some cause or other, although this munificence on the part of the crown to Lady Jane should have secured her and her husband from want, and might even have enabled them to live in comparative comfort, yet they still continued to suffer from penury to a deplorable extent, Lady Jane having been obliged more than once to sell her clothes and other effects to support her husband, who was still a prisoner in the King's Bench prison. She lived for some time, while Mr. Stewart was in prison, with the children, at Chelsea; and from the tenor of numerous letters which passed between the unhappy pair, produced in the legal process afterwards spoken of, they seem to have treated the children most affectionately, and in every respect as the kindest of parents. In 1752, Lady Jane went to Scotland, and attempted to effect

a reconciliation with her brother the duke, but in vain—she was not even admitted into his presence. She returned again to London, leaving the children at Edinburgh, under the care of a woman who had formerly accompanied her and her husband as a servant to the continent. The younger of the twins, who was named Sholto Thomas Stewart, died on the 14th May, 1753, which event seems to have deeply afflicted Lady Jane, who returned shortly after it to Edinburgh, and again tried to effect a reconciliation with her brother, but in vain. Her health was now completely broken up; and, in November following, the unfortunate lady died at Edinburgh.

After the death of Lady Jane, the surviving twin, Archibald, was befriended by Lady Shaw, who, generously pitying his destitute condition, took him under her protection, and supported and educated him. Upon her death, he found an able friend in the person of a noble peer; and, in the year 1759, Mr. Stewart, succeeding by the death of his brother to the estate and title of Grantully, executed, as the first act of his administration, a bond of provision in his favour for upwards of 2500*l.*, wherein he designated him as his son by Lady Jane Douglas.

Meanwhile, the Duke of Douglas continued obstinate in his refusal to acknowledge him as his nephew. The duke had, during the far greater part of his life, so entirely withdrawn himself from the world, and had lived in such constant retirement at his castle at Douglas, that there was little reason to expect that he would ever think of marriage, though that was an event much wished for by every friend of his family. However, the duke disappointed the public expectations; for, in the year 1758, he entered into a marriage with the duchess, which, by what followed, seems to have been an event highly favourable to Mr. Douglas. The duchess seems immediately to have espoused his cause, with all that warmth which is natural to those who think they act upon the side of truth and humanity. But perhaps her grace was rather too eager and keen in endeavouring to alter the sentiments of the Duke of Douglas with respect to the birth of the defendant, whether these sentiments were the effect of imposition, or of real conviction upon his part. Whichever of these was the truth, it is certain that the duke and duchess quarrelled upon this point, and that their quarrel gave rise to a separation betwixt them. But this did not continue long; the duke and duchess were soon, by the mediation of some friends, brought together, and effectually reconciled to one another. In summer 1761, the Duke of Douglas was seized with a distemper, which, in the opinion of his physicians, would prove mortal. The duke was of the same opinion himself; and, therefore, on the 11th July, 1761, when he was drawing near his end, he executed an entail of his whole estate in favour of the heirs whatsoever of the body of his father James Marquis of Douglas, remainder to Lord Douglas Hamilton, brother to the Duke of Hamilton, &c. &c. And of

the same date, the duke executed another deed, setting forth, that as, in the event of his death without heirs of his body, Archibald Douglas, alias Stewart, a minor, and son of the deceased Lady Jane Douglas, his sister, would succeed to him in his dukedom of Douglas; he therefore, by that deed, appoints the Duchess of Douglas, the Duke of Queensberry, and several other noble and honourable persons, to be his tutors and guardians.

Here was a surprising change in the fortunes of the destitute boy, who had seen her whom he believed to be his mother expire in a miserable garret, her last moments uncheered by the presence of any of her kindred, and had, after her death, depended for existence upon the bounty of strangers. His guardians proceeded, immediately after the duke's death, to have him put in possession of the estate of Douglas. He was held before a jury to be heir to the late duke, after the examination of a great body of evidence, the examination or inquest having been attended by counsel on the part of the Duke of Hamilton, who claimed the Douglas estate as heir-male.

The guardians of the Duke of Hamilton were not convinced, by the proof exhibited to the jury, of the legitimacy of Douglas, and, with the view of determining the truth, they dispatched Mr. Andrew Stewart, one of their number, to Paris. Mr. Stewart's discoveries were in his opinion of importance, and his colleagues believed that they amounted to no less than a demonstration that the whole story of the pretended delivery, as set forth in the service of Mr. Douglas, was an absolute fiction.

In these circumstances, three actions of reduction of that service were respectively raised, at the instance of the Duke of Hamilton's guardians, Lord Douglas Hamilton and Sir Hew Dalrymple of North Berwick, which actions were afterwards conjoined by the Court of Session. The effect of the conjoined action, if successful, would have been to declare that Mr. Douglas was not the son of Lady Jane, and consequently, to set him aside from the estate.

This extraordinary law plea excited so much attention at the time, and has obtained so great a celebrity since, that we think the following summary of the proofs on both sides will not be unacceptable to the reader:—

The proofs for Mr. Douglas consisted of—1st, The depositions of several witnesses, that Lady Jane appeared to them to be with child while at Aix-la-Chapelle, and other places 2dly, The direct and positive testimony of Mrs. Hewit, who accompanied Lady Jane to Paris, to the actual delivery at Paris upon the 10th July, 1748. 3dly, The depositions of other witnesses with regard to the claimant's being owned and acknowledged by Lady Jane and Sir John Stewart to be their child, and the habit and repute of the country. 4thly, A variety of letters which had passed betwixt Sir John Stewart, Lady Jane Douglas, Mrs. Hewit, and others, respecting the claimant's birth. 5thly, Four letters, said to have been

written by Pierre la Marre, who, according to the defendant's account, was the accoucheur to the delivery of Lady Jane, and which were presented as so many true and genuine letters. Add to these, that a few days before his death, which happened in June 1764, Sir John Stewart emitted a solemn declaration in presence of two ministers and one justice of the peace, declaring and asserting as stepping into eternity, that the defendant and his deceased twin-brother were both born of the body of Lady Jane Douglas, his lawful spouse, in the year 1748. Mrs. Hewit, who was charged with being an accomplice in the fraud, died during the law plea of a lingering illness, and to the last persisted that all she had sworn about the birth of the defendant was truth, excepting some mistakes and errors as to names and dates, which she corrected in a letter to a reverend gentleman of the Episcopal communion, to whom, when visiting her in the way of his profession, she again and again affirmed solemnly that what she had sworn as to the birth was true.

We have here a body of evidence which at first sight seems irrefragably to establish the genuineness of Mr. Douglas's claim; but no one can read the counter-proof without acknowledging that it is well calculated to make him "perplexed in the extreme."

The pursuers maintained—1st, That Lady Jane was not delivered upon the 10th of July, 1748, by the evidence of various letters written by Sir John Stewart and Mrs. Hewit upon the 10th, 11th, and 22d July, 1748. 2dly, That Lady Jane Douglas was not delivered in the house of a Madame la Brune, nor in the presence of a Madame la Brune and her daughter; under which head they brought various circumstances to show that no such persons as the Madame la Brune in question, or her daughter, ever existed. 3dly, That Lady Jane Douglas could not have been delivered either upon the 10th of July, or in the house of a Madame la Brune, because that, upon that date, and during several days preceding and subsequent to the 10th of July, Lady Jane Douglas, with her husband and Mrs. Hewit, resided at the Hotel de Chalons, kept by Mons. Godofroi, where it is acknowledged she was not delivered: and this *alibi* the plaintiffs asserted to be clearly proved by the testimony of Mons. and Madame Godofroi, as well as by certain books kept by them, called the *livre d'epense* and *livre logeur*. 4thly, The falsehood of the delivery in the house of a Madame la Brune upon the 10th July, is also proved by Lady Jane's situation upon her arrival at the house of Madame Michelle, and by the incidents which happened during her continuance there. 5thly, Is stated the evidence of imposture arising from the studied concealment and mystery at Paris in July 1748, when Sir John and Lady Jane, with their *confidante* Mrs. Hewit, carried with them from Paris to Rheims one child; and from their repetition of the same concealment and mystery, upon their return to Paris in November 1749, when the same three persons brought from Paris

Rheims a second child. Lastly, the plaintiffs brought a proof, that at Paris, in the month of July 1748, a male child, recently born, was carried off from his parents of the name of Mignon; and that, in the month of November 1749, another male child, born in the year 1748, was carried off from his parents, of the name of Sanry. That both these children were under false pretences carried off from their parents by British persons then at Paris, and that these British persons were Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit.

To these were added a most critical examination of the defendant's proof of Lady Jane's pregnancy, and a contrary proof brought to refute it, and the proof of the non-existence of the *Pierre la Marre*, whom the defendant affirms to have been the accoucheur, with a proof of the forgery of the letters attributed to him.

On the 7th July, 1767, the case came on for judgment in the Court of Session, and so important was the cause deemed, that the Judges, fifteen in number, took no less than eight days to deliver their opinions. The result was, that seven of the Judges voted to sustain

the reasons of reduction, and the other seven to assolzie the defender; the Lord President, who has no vote but in such a dilemma, voted for the reduction, by which Douglas, alias Stewart, lost both name and estate. An appeal from this decision having been taken to the House of Peers, the judgment of the Court of Session was reversed in the year 1769, and Douglas declared to be the son of Lady Jane, and heir of the Duke of Douglas. Archibald Douglas was created Lord Douglas by Geo. 3, in 1796, and his son is the present peer of that name, and now enjoys the princely family estates.

The printed papers in this great law plea make up a formidable array of huge volumes, and are in great request for the libraries of Scottish lawyers to this day. It is acknowledged on all sides that never was a more creditable display exhibited on the bench than in the opinions delivered by the Judges, many of whom were known by their literary efforts throughout Europe. Among these were Lord Kaimes, Lord Gardenstone, and Lord Monboddo, who voted for the defender, and Lord Hailes, who voted for the reduction.

ATTORNEYS APPLYING TO BE ADMITTED,

Easter Term, 1838.

QUEEN'S BENCH.

Clerk's Name and Residence.

To whom articulated, assigned, &c.

Atkinson, Frank Argles, Brighton, and Great Ormond Street.

Thomas Attree, Brighton.

Adney, John, Great Tower Street, and Woolbridge, Dorset.

Septimus Smith, Blandford Forum; assigned to Thomas Pearson, 22, Essex Street.

Bassett, Joseph, Oswestry.

Thomas Longueville Longueville, Oswestry.

Baynes, Edward Robert, Odstock, Bucks, and Bedford Street.

John King, Buckingham.

Burn, Henry Richard, Free School, St. Southwark, Hertford, and 2, New Boswell Court.

George Nicholson, Hertford.

Brackenbury, Bennett, Gainsborough

Benjamin Codd, Gainsborough.

Brooke, William, Derby.

James Blythe Simpson, Derby.

Bayly, Thomas Heathcote, Ampthill.

Ezra Eagles and John Eagles, Ampthill.

Bartrum, John Comerford, Old Broad Street.

Thomas Bartrum, Old Broad Street.

Burrow, Robert, Collumpton, and Budleigh Salterton, Devon.

Henry Daubney Melhuish, Budleigh Salterton.

Bourdillon, Francis, Gower Street North, and 33, Dorset Street.

George Law, Lincoln's Inn.

Benning, Thomas, Staindrop.

Joseph Anthony Benning, Staindrop; assigned to Thomas Kirk, Symond's Inn.

Bellamy, Charles, John Street, Bedford Row. Barlow, Richard, Norwich; Hampstead; and New Millman Street.

William Henry Bellamy, Hereford. Charles John West, Norwich.

Baker, Henry, Crosby Square, and Newbury.

Robert Baker, Newbury.

Bennett, Nicholas, St. Stephens by Saltash, Cornwall, and Upper Stamford Street.

Edward Sole, Devenport.

Breese, Daniel, Llanfyllin, Montgomery.

John Williams, Llanfyllin

Clerk's Name and Residence.

To whom articulated, assigned, &c.

Cook, Thomas, West Terrace, St. George's Road, Surrey, and Alnwick, Northumberland.	William Forster, Alnwick.
Chappell, Frederick Patey, 14, George Street, Hanover Square.	Richard Nation, 23, Somerset Street, Portman Square.
Clayton, Sykes, Loughborough: 114, Upper Street, Surrey; and Strand on the Green.	Beauvoir Brock, Loughborough.
Carnell, Edward, Sevenoaks, and Park Village West, Regent's Park.	Thomas Carnell, Sevenoaks.
Clitherow, Robert, the younger, Horncastle; 25, Villiers Street; and 2, King's Terrace, Pentonville.	Robert Clitherow, sen., Horncastle.
Collins, John Stratford, the younger, Ross.	John Stratford Collins, sen., Ross.
Cutcliffe, William Elford, Hand Court, and Barnstaple.	William Law, Barnstaple.
Cobbett, Richard Baverstock Brown, 5, King's Road.	Edward Chamberlain Faithfull, King's Road.
Cormack, Thomas, Falcon Square, and Arundel Terrace, Islington.	Francis Broughton, Falcon Square.
D'Arcy, John Ryves, 26, Red Lion Square.	John Moysey Bartlett and William Francis D'Arcy, Newton Abbott; assigned to James Hore, Serle Street, Lincoln's Inn.
Douglass, Adye, Southampton.	Edward Harrison, Southampton.
Evans, Charles, Compton Street East.	Charles Shearman, Gray's Inn.
Ewer, Harry Alexander, 9, Church Street, Newington, and Norwich.	Henry Pulley, Norwich, and 4, New Bridge Street.
Elgie, Frederick Thomas, Great Malvern, and Worcester.	Matthew Elgie, Worcester, formerly to Thos. Elgie, Great Malvern.
Edgcombe, John Treeve, Newcastle-upon-Tyne, and Arundel Street.	John Fenwick, Newcastle-upon-Tyne.
French William, Shipston-on-Stour; 12, Penton Street; and 7, Upper Baker Street.	Thomas Wood, Shipston-on-Stour; assigned to Fred. F. Findon, Shipston-on-Stour.
Fernell, William Burgoyne, Sheffield, and 14, Cecil Street, Strand.	Thomas Branson, Sheffield.
Freeman, John Ibroke, Great Yarmouth, and 10, Edmund's Place, Aldersgate Street.	James Cobb, Great Yarmouth.
Fairclough, William Charles, Liverpool.	Edward Guy Deane, Liverpool.
Foreman, Robert Henry, Greenwich.	Charles Augustin Smith, Greenwich.
Freshfield, Henry Ray, 9, Upper Wimpole Street.	James William Freshfield, New Bank Buildings.
Gregg, Humphrey Archer, Kirkby Lonsdale, and King's Terrace, Clerkenwell.	William Preston, Kirkby Lonsdale; assigned to W. Romaine Gregg, Kirkby Lonsdale.
Gregory, John Alexander, Windsor.	Charles Woodbridge, Uxbridge; assigned to John Ilderton Burn, 4, Raymond Buildings; assigned to Henry Darvill, Windsor.
Gaskell, Josiah Marsh, Wigan.	Thomas Morris, Wigan; assigned to John Lord, Wigan.
Holme, Henry, Pontefract, Huddersfield.	William Clough, Pontefract, and Huddersfield.
Hill, Alfred Wither, Chapel Place, Bernondsey; Well Yard, West Smithfield; and Worting.	John Cole, Odiham.
Harwood, Thomas, Camberwell Grove, and Gray's Inn Square.	George Lamb, Basingstoke.
Hodgkinson, George, Thorne, York.	William Thoyce, Thorne.
Hickling, Benjamin the younger, Wolverhampton; 5, Harpur Street, Red Lion Sq.; and 29, Kenton Street.	Joseph Foster, Wolverhampton.
Hayes, Robert, 7, St. George's Terrace, and 9, Clement's Inn.	Thomas Porrett Hayes, Bedford Row.
Hallett, Henry Hughes, 13, Clement's Inn.	Thomas Charles Bellingham, Battle.
Hobbs, Samuel, Wells.	Thomas Conway Robins, Wells.

*Clerk's Names and Residence.**To whom articulated, assigned, &c.*

Holdsworth, Charles Hunt, Essex Street ; Inner Temple Lane ; and 21, City Road.

Humphreys, William Charles Christmas, Newgate Street.

Hodgson, Joseph, 2, Polygon, Somer's Town ; Meare, Somerset ; and 13, Castle Street, Finsbury.

Innis, Charles, the younger, Euston Square.

James, Charles Herbert, Merthyr Tydfil, Glamorgan, and 25, Arundel Street, Strand.

Jahet, George, Birmingham.

Jeffery, Francis Robert, Arthur Street, and Ottery St. Mary, Devon.

Jones, Nathaniel Davies, Swansea ; Merthyr Tidvil.

Jeffery, John William, St. Anthony, Cornwall, and 15, New Ormond Street.

Kendell, John, the younger, Barnard's Inn.

Keene, George John, Cambridge Street, Edgware Road.

Kemp, Thomas Cooke, 11, Weston Street, Pentonville.

Kenny, William Fenton, Halifax, and Barnsbury Place, Islington.

Ley, Arthur, Torquay, Devon ; Durrant House, Northam ; and 57, Lincoln's Inn Fields.

Lacey, William Charles, Goulston Terrace, Islington.

Linklater, John, Northumberland Street.

Lindsay, Ralph, the younger, St. Thomas Street, Southwark.

Micklefield, Anthony Horrex Roger, Frederick Street, Grays' Inn Road.

Maughan, John, 57, Lamb's Conduit Street, and Pontypool.

Moore, Charles William, Tewkesbury.

Medley, Lewis Whittle, 13, Upper Seymour Street West, and 13, St. George's Terrace.

Morgan, William, Brecon ; 93, New Bond Street, and 28, Great Ormond Street.

Miller, Henry, Bridport.

Nicholson, William, York Buildings, New Road ; Warrington ; and Manchester.

Nixon, John, Darlington, and 46, Wilmington Square.

Norris, William, Manchester, and 19, Lower Chadwell Street.

Owen, Maurice Wynn, Plus Wylmot, near Oswestry.

Samuel Were Prideaux, Dartmouth.

William Corne Humphreys, Newgate Street ; assigned to William Faulkner, Saddler's Hall.

John Shuckburgh How, Tiverton.

Abraham King, Castle Street, Holborn ; assigned to William Mossen Kearns, Red Lion Square.

William Perkins, Merthyr Tydfil.

Thomas Buckley Lefevre, Birmingham.

John Maynard Henry Bate, Ottery St. Mary.

Thomas Rogers Jones, Swansea ; assigned to Charles Basil Mansfield, Swansea ; assigned to William Perkins, Merthyr Tidvil.

Edward Sole, Devonport.

John Sangster, Leeds ; assigned to Holden Walker, Barnard's Inn.

George Medcalf, Gray's Inn ; assigned to Augustus Henry Burt, Essex Street.

Ebenezer Kemp Randell, 1, Walbrook Buildings ; assigned to George Becke, Lincoln's Inn Fields.

Edward Nelson Alexander, Halifax.

William Kitson, Torquay.

Thomas Webster, Queen Street ; assigned to Joseph Edmund Poole, 16, Southampton Buildings ; assigned to Thomas G. Fynmore, Craven Street.

James Maitland Dolls, Northumberland St.

Ralph Lindsay, St. Thomas Street.

Roger Micklefield, Stoke Ferry.

William Edwards, Southam, now of Leamington Priors ; assigned to Samuel Walker, 29, Lincoln's Inn Fields ; assigned to William Foster Geach, Pontypool.

Anthony Sproule, Tewkesbury.

Robert Samuel Palmer, 4, Trafalgar Square.

John Jones, Brecon ; assigned to T. Metcalfe the younger, 5, New Square, Lincoln's Inn.

Edward Nieholetts, Bridport.

Peter Nicholson, Warrington ; assigned to Alexander Kay, Manchester.

John Sheppard, Barnard Castle ; assigned to Francis Mewburn, Darlington ; assigned to John Coates, Darlington.

John Norris, Manchester.

Thomas Longueville Longueville, Oswestry ; assigned to Edward Williams, Oswestry.

Clerk's Name and Residence.

Osmond, George Philip, Coleman Street; Tiverton; 2, Hart Court, Bloomsbury; 11, Hand Court, Holborn; and 32, Southampton Row.

Pickthall, William, Kendall, and Wharton Street.

Pidcock, Henry, Huntingdon; and 16, King's Road, Bedford Row.

Paterson, Edward, 15, Holloway Road.

Pritt, William, Liverpool.

Parke, Thomas Wright, 38, Castle Street, Holborn.

Pollock, Charles Masou Innes, Dartmouth Street.

Paul, Charles William, Tetbury, and 6, Southampton Street.

Patchitt, Edwin, Nottingham; the Forest near ditto; and Hyson Green.

Palmer, Thomas Ellis, Brighton, and 16, Garnault Place, Clerkenwell.

Pinckney, George Henry, Southampton Row; East Shcen; and 23, Featherstone Buildings.

Parsons, James, Somerton.

Roberts, Richard, Gray's Inn Square, 15, Robert Street, Bedford Row.

Reynolds, Robert Arthur, Fordlands near Bideford; Cheltenham; and 24, New Milman Street,

Sinnock, Henry Charles, Hailsham.

Smith, John, 52, King's Square, Birmingham, and 14, South Square, Gray's Inn.

Shearman, Montague, 4, Harper Street.

Stuart, John Arch, 4, Queen Street, Oxford Street, and 26, Shouldham Street.

Samuel, Sampson, South Place, Finsbury.

Senior, Charles, Liverpool.

Sharland, Arthur Cruwys, Park Street, Camden Town.

Smith, George, Great Surrey Street, and Reading.

Stead, William Empson, Kingston-upon-Hull.

Smith, John Browne, the younger, Dartmouth, and 69, Great Russell Street.

Smith, Arthur, George Street, Adelphi, and 45, Beaumont Street.

Shaw, Charles, Terrace, Walworth.

Templer, George Denis O'Kelly, Greenwich; Bridport; and Launceston.

Tucker, Jervis, Mecklenburgh Square, and Rainsgate.

Toms, John Anstey, Tiverton and Witheridge, Devon, and 16, Huntley Street.

Tarrant, Robert, 44, Dean Street, Soho.

Thairwall, Frederick, Richmond, York, and 19, Princes Street, Stamford Street.

Tapley, Lewis, Coleman Street; Great Torrington; and 8, Windsor Terrace, City Road.

To whom articulated, assigned, &c.

Robert Loosemore, Tiverton; assigned to Barry Parr Squance, Coleman Street.

John Poole, Gill Head, Cartmel; assigned to Thomas Wardle, Kendal.

Charles Margetts, Huntingdon.

John Mills, Brunswick Place, City Road; assigned to Henry Hill, Crutched Friars.

William Hinde, Liverpool.

Roger Williams Gein, Birmingham.

Henry Howlett, Bartlett's Buildings; assigned to George Kennet Pollock, Red Lion Square; assigned to Richard Hervé Giraud, Furnival's Inn.

Robert Clark Paul, Tetbury.

William Sculthorpe, Nottingham.

Thomas Crossweller, Brighton.

Edward Hillier, Raymond Buildings.

Edwin Newman, Yeovil.

George Faulkner, Bedford Row; assigned to Charles Cutler, Paternoster Row.

Robert Wilton, Gloucester.

Samuel Sinnock, Hailsham.

William Newton, 14, South Square; assigned to Alexander Harrison, Birmingham.

John Shearman, 21, Bartlett's Buildings; assigned to Charles Smith, Clifford's Inn.

Henry Bounsall, 28, Charlotte Street, Bloomsbury.

James Adamson, 29, Ely Place.

William Wood, Liverpool.

Henry Karlake, Regent Street.

John Weedon, Reading; assigned to Henry Rivington Hill, Copthall Court.

William Empson Jolland, Kingston-upon-Hull; assigned to W. Ayre, the younger, Kingston-upon-Hull.

John Browne Smith, Dartmouth.

John Lawrens Bicknell, Abingdon Street.

James Fuller Madox, Austin Friars; 30, Clement's Lane.

Charles Gurney, Launceston.

Edward Downes, Furnival's Inn.

James Partridge, Tiverton.

John Evans Tarrant, Dean Street, Soho.

James Brown Simpson, Richmond.

Montague Edward Smith, Great Torrington; assigned to William Evan Price, Great Torrington.

Clerk's Name and Residence.

Thomas, William Henry, Aberystwyth.
 Thomas, Harwood, 6, Salisbury Place, and
 94, Milton Street, Mary-le-bone.
 Tonge, Robert, York.

Watson, Henry Edmund, Sheffield, and Church
 Court, Lothbury.
 Wilkins, Richard, Warwick.
 Were, Henry Bowden, Plymouth, and 9,
 Artillery Place.
 Wightman, Benjamin, Sheffield, and 34, Clare-
 mont Square.
 Wilson, William, Lancaster; 3, and 18, Sid-
 mouth Place, Wakefield Street.
 Woodhouse, George, Doveton, Sidmouth Street.
 Woodward, Henry, 9, Great Queen Street,
 Westminster.
 Worsley, John, Fareham.
 Williams, James, 47, Warwick Street.
 Williams, Evan, Newton.
 Westmacott, Arthur, South Audley Street.
 Witty, Richard Henry, Essex Street, Strand.

Williams, Albert, Greenham, near Newbury.
 Waterworth, Thomas, Wakefield.
 Ward, William Sykes, Millman Street.
 Weir, John Sims, Mecklenburgh Square.

To whom article, assigned, &c.

Horatio Hughes, Aberystwyth.
 William Wyberg How, Shrewsbury.
 Thomas Scotchburn, Driffild.
 John Watson, Sheffield.
 Joseph Page, Warwick.
 William Eastlake, Plymouth.
 Thomas Branson, Sheffield.
 Thomas Baldwin, Lancaster.
 Francis Blake, King's Road, Bedford Row.
 Nathaniel Milne, Inner Temple; assigned to
 William Parry, Inner Temple.
 Robert Riddell Bayley, 4, Basinghall Street.
 John Powell, Brecon.
 Thomas Drew, Newtown.
 Edward Thomas Whitaker, Gray's Inn Square.
 William John Willett, Essex Street; assigned
 to T. Carington Campbell, Essex Street.
 Robert Fuller Graham, Newbury.
 Benjamin Dixon, Wakefield.
 William Ward, Leeds.
 J. W. Freshfield, the younger, New Bank
 Buildings.

*Notices left at the Muster's Office, after the proper time. Ordered by the Judges at Chambers
 to be added to the List.*

Cheeseman, Thomas, Mill Lane, Maidstone.
 Davis, John, Banbury, Oxford.
 Foster, William John Slade, Bewdley, Wor-
 cester; Baptist Mills, Gloucester; parish
 of Westbury-upon-Trym, Gloucester; 11,
 Sidmouth Street, Regent Square, Middle-
 sex.
 Gutch, John James, parish of Seagrave, Lei-
 cester, and Bridge House, Paddington,
 Middlesex.
 Jones, Benjamin, Loughor, near Llanelly,
 Carmarthenshire.
 Lyndon, Charles, Stockbridge Terrace, Pimlico.

Turner, Francis, New Malton, York, and 24,
 South Audley Street, Grosvenor Square,
 Middlesex.
 White, William, New Dorset Place, Clapham
 Road, Surrey.
 Wickham, Henry, 29, Queen Square, Blooms-
 bury.

Knowles King, Mill Lane, Maidstone.
 Thomas Tims, Banbury, Oxford.
 Slade Baker, borough of Bewdley.

Joseph Radcliffe Wilson, Stockton-upon-Tees,
 Durham.

Charles Basil Mansfield, Llanelly and Swansea.

Cobbett Derby, 2, Harcourt Buildings, Tem-
 ple.

Thomas Walker, New Malton, York.

John Tilleard, Old Jewry, London.

Philip Augustus Hanrott, 29, Queen Square,
 Bloomsbury.

CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

SPRING CIRCUITS, 1838.

NORTHERN CIRCUIT.

H. R. Reynolds, Esq., Chief Commissioner.

Rutlandshire, at Oakham, Tuesday, Feb. 20.

Yorkshire, at Sheffield, Thursday, Feb. 22.

Yorkshire, at Wakefield, Saturday, Feb. 24.

At the Town of Kingston-upon-Hull, Friday
 March 2.

At the City of York, Saturday, March 3.

Yorkshire, at Richmond, Wednesday, March 7.

Durham, at Durham, Thursday, March 8.

Northumberland, at Newcastle-upon-Tyne,
 and Town, Saturday, March 10.

Cumberland, at Carlisle, Wednesday, March
 14.

Westmorland, at Appleby, Friday, March 16.
Westmorland, at Kendal, Saturday, March 17.
Lancashire, at Lancaster, Monday, March 19.
Lancashire, at Preston, Thursday, March 29.
Lancashire, at Liverpool, Saturday, March 31.
Cheshire, at Chester and City, Wednesday, April 4.
Flintshire, at Mold, Friday, April, 6.
Denbighshire, at Ruthin, Saturday, April, 7.
Anglesey, at Beaumaris, Tuesday, April, 10.
Carnarvonshire, at Carnarvon, Wednesday, April 11.
Merionethshire, at Dolgelly, Saturday, April 14.
Montgomeryshire, at Welch Pool, Monday, April 16.

HOME CIRCUIT.

J. G. Harris, Esq., Commissioner.

Sussex, at Hove, Wednesday, March, 7.
Kent, at Maidstone, Friday, March 9.
Kent, at Dover, Monday, March 12.
At the City of Canterbury, Tuesday, March 13.
Hertfordshire, at Hertford, Friday, April 6.

SOUTHERN CIRCUIT.

T. B. Bowen, Esq., Commissioner.

Berkshire, at Reading, Saturday, Feb. 17.
Oxfordshire, at Oxford, Monday, Feb. 19.
Worcestershire, at Worcester and City, Wednesday, Feb. 21.
Radnorshire, at Presteigne, Friday, Feb. 23.
Hertfordshire, at Hereford, Saturday, Feb. 24.
Brecknockshire, at Brecon, Monday, Feb. 26.
Pembrokeshire, at Haverfordwest and Town, Wednesday, Feb. 28.
Cardiganshire, at Cardigan, Friday, March 2.
Carmarthenshire, at Carmarthen and Borough, Monday, March 5.
Gloucestershire, at Swansea, Thursday, Mar. 8.
Gloucestershire, at Cardiff, Saturday, March 10.
Monmouthshire, at Monmouth, Monday, March 12.
Gloucestershire, at Gloucester and City, Wednesday, March 14.
At the City of Bristol, Saturday, March 17.
Somersetshire, at Bath, Wednesday, March 21.
Somersetshire, at Wells, Friday, March 23.
Devonshire, at Exeter and City, Monday, March 26.
Dorsetshire, at Plymouth, Thursday, March 29.
Corwall, at Bodmin, Saturday, March 31.
Dorsetshire, at Dorchester, Tuesday, April 3.
Wiltshire, at Salisbury, Thursday, April 5.
At the Town of Southampton, Saturday, April 7.
Hampshire, at Winchester, Monday, April 9.

MIDLAND CIRCUIT.

W. J. Law, Esq., Commissioner.

Essex, at Chelmsford, Monday, March 19.
Essex, at Colchester, Tuesday, March 20.
Suffolk, at Ipswich, Wednesday, March 21.
Norfolk, at Norwich and City, Friday, March 23.

Norfolk, at Yarmouth, Monday, March 26.
Norfolk, at Lynn, Tuesday, March 27.
Suffolk, at Bury St. Edmunds, Tuesday, March 29.
Cambridgeshire, at Cambridge, Friday, March 30.
Huntingdonshire, at Huntingdon, Saturday, March 31.
Northamptonshire, at Peterborough, Monday, April 2.
Lincolnshire, at Lincoln and City, Tuesday, April 3.
At the Town of Nottingham, Thursday, April 5.
Nottinghamshire, at Nottingham, Friday, April 6.
Derbyshire, at Derby, Saturday, April 7.
Leicestershire, at Leicester, Monday, April 9.
At the City of Lichfield, Tuesday, April 10.
Staffordshire, at Stafford, Wednesday, April 11.
Shropshire, at Shrewsbury, Saturday, April 14.
Shropshire, at Oldbury, Monday, April 16.
Warwickshire, at Birmingham, Thursday, April 17.
At the City of Coventry, Wednesday, April 18.
Warwickshire, at Warwick, Thursday, April 19.
Northamptonshire, at Northampton, Monday, April 23.
Bedfordshire, at Bedford, Tuesday, April 24.
Buckinghamshire, at Aylesbury, Wednesday, April 25.

MISCELLANEA.

ORIGIN OF ATTORNEYS.

THE word Attorney is a relic of ancient customs. It seems to have primarily signified one who appeared at the *tourney*, and did battle in the place of another. These tournaments, or minor tournaments, often consisted of single combats to support or rebut charges, civil or criminal; and where a lady, or a minor, or a very aged person, was a party in the business, some capable individual usually came forward as a substitute. The term "attorney," however, it is probable, did not arise from these vicarious appearances at common tournaments, but rather from a similar thing taking place at certain biennial meetings held by the shire-reeve, or sheriff, of each of the English counties, in the times of our Saxon ancestors, and which meetings were called the sheriffs' *turns* or *tourns*. These resembled ordinary tournaments, in so far as the law permitted accusations to be maintained or repelled by personal contests, and these must have been frequently determined by deputy, in such cases as those already alluded to. By-and-bye, when Justice began to take it into her head that a very strong man and a capital fighter might be nevertheless a very great scoundrel—a fact she seems to have been long ignorant of—matters came to be settled at the sheriffs' turns by words, not blows, and as parties in

causes could not all be orators, the practice of employing substitutes who had the gift of ready speech, must have speedily been found convenient. Those who thus appeared and spoke for others were named attorneys, and a numerous and important class they have in course of time become.

SINGULAR OATH.

ASSISERS, (Assisores) Sunt qui assisus con-
dunt, aut iustitias imponunt.—In Scotland,
(according to Skene,) they are the same with
our jurors; and their oath is this:

We shall leil suith say,
And no suith conceal, for nothing we may,
So far as we are charg'd upon this assise,
Be God himself, and be our part of paradise,
As we will answer to God, upon
The dreadful day of dome.

LIST OF NEW PUBLICATIONS.

Scott's Reports of Cases in the Court of
Common Pleas. Vol. 4, Part 1. Price 6s. 6d.

Mylne and Craig's Reports of Cases in the
High Court of Chancery. Vol. 2, Part 3.
Price 12s.

Dowling's Practice Cases. Vol. 6, Part 1.
Price 6s. 6d.

A Treatise on the Law of Executors and
Administrators. Second edition. By E. N.
Williams, of Lincoln's Inn, Esq., Barrister at
Law. 2 Vols. royal 8vo. Price 2l. 16s. bds.

Practical Suggestions for Tithe Commuta-
tion. Designed to facilitate the Progress of
Voluntary Agreements. Price 1s. sewed.

Addenda to the Practice of the High Court
of Chancery, as altered by the Orders of the
3d of April, 1828; the 23d of November, 1831;
the Chancery Regulation Act, 3 & 4 W. 4,
c. 94; and the Orders issued in pursuance
thereof, on the 21st of December, 1833; con-
taining the Orders issued on the 23d of Feb.,
1837, relating to the Fees of Court, and the
Order issued on the 5th of May, 1837, for
better Regulating the Hearing of Causes.
By a Chancery Barrister. Price 1s.

The Law of Executors and Administrators.
By Sir Samuel Toller, Knight, late Advocate
General at Madras. The seventh edition, cor-
rected, with considerable additions. By Francis
Whitmarsh, Esq., one of Her Majesty's
Counsel. 8vo. Price 16s. bds.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

December, 1837.

Harrison, George Marsh, Hart Street,
Bloomsbury.

Flower, William, Furnival's Inn.

Miller, James, Eastcheap, City.

France, William Barnard, Gray's Inn Square.

Simpson, William Robert, 8, Red Lion
Street, Clerkenwell.

Turner, Brooke, Red Lion Square.

Vallance, Henry, Essex Street, Strand.

Tudway, Clement, 1, John Street, Bedford
Row.

Hill, Henry Rivington, Copthall Court.

MASTERS EXTRAORDINARY IN CHANCERY.

From Dec. 26, 1837, to Jan. 19, 1838, both in-
clusive, with dates when gazetted.

Croxton, George, Oundle, Northampton. Dec.
29.

Murphy, William, Wellenborough, North-
ampton. Jan. 2.

Scudamore, Charles, Maidstone, Kent. Jan.
19.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Dec. 26, 1837, to Jan. 19, 1838, both in-
clusive, with dates when gazetted.

Comport, Michael, and Felix Knyvett, Roch-
ford, Essex, Attorneys, Solicitors, and Con-
veyancers. Jan. 2.

Cary, Samuel, and William Blackwell Cross,
Bristol, Attorneys and Solicitors. Jan. 2.

Porter, Edward Robert, and Thomas Wright,
Nelson, New Court, Temple, Attorneys and
Solicitors. Jan. 2.

Pritchard, George, and William Henry God-
dard, New Bridge Street, Attorneys and
Solicitors. Jan. 9.

Hewitt Thomas Sidney, and Richard Trevor
Roper, Tokenhouse Yard, London, Attor-
neys and Solicitors. Jan. 9.

Perkins, Richard, and William Hamwood
Frampton, Gray's Inn Square, Attorneys.
Jan. 16.

Butler, Charles Salisbury, and Charles Harries,
Great Saint Helens, London, Attorneys and
Solicitors. Jan. 16.

BANKRUPTCIES SUPERSEDED.

From Dec. 26, 1837, to Jan. 19, 1838, both inclusive, with dates when gazetted.

- Driver, James, Cambridge, Hatter and Furrier. Dec. 26.
 Marsh, Samuel, Burslem, Stafford, Manufacturer of Earthenware. Jan. 5.
 Mac Cracken, Ross, Manchester, Flour and Provision Dealer, Baker and Shopkeeper. Jan. 5.
 Simcock, Thomas, and James Slater, Little Ryder Street, St. James's, Tailors. Jan. 19.

BANKRUPTS.

From Dec. 26, 1837, to Jan. 19, 1838, both inclusive, with dates when gazetted.

- Aman, Richard, Northampton, Cabinet Maker. *Lewis & Co.*, Ely Place: *Markham & Co.*, Northampton. Dec. 29.
 Allen, James, and John Sherwin, Dartford, Kent, Farmers and Brick Makers. *Johnson, Off. Ass.: Van Sandau & Co.*, Old Jewry. Jan. 16.
 Burke, Samuel, Liverpool, Coal and Commission Agent. *Davenport & Co.*, Liverpool: *Raynes* Norfolk Street, Strand. Dec. 29.
 Bownas, Wm., Wortley, Leeds, York, Cloth Manufacturer. *Battye & Co.*, Chancery Lane: *Naylor*, Leeds. Dec. 29.
 Blake, Charles Boyd, Woolpit, Suffolk, Innkeeper. *Gudgeon*, Stowmarket: *Chilton*, Chancery Lane. Dec. 29.
 Blomfield, John, Farringdon Street, London, Warehouseman and Carrier. *Belcher, Off. Ass.: Holmes*, Liverpool Street, Broad Street. Jan. 5.
 Brewer, Samuel Kilbinton, Brighton, Sussex, Librarian, Bookseller and Stationer. *Cooper & Co.*, Brighton: *Hore*, Serle Street, Lincoln's Inn. Jan. 9.
 Brewer, William, Bristol, Corn Merchant. *Baynton & Co.*, Bristol: *Horton*, Farnival's Inn. Jan. 9.
 Battye, Henry, Hey, Wooldale, Kirkburton, York, Clothier. *Jaques & Co.*, Ely Place: *Iveson*, Holmŕurth, near Huddersfield. Jan. 12.
 Beckingsale, Frederick, Bridport, Dorset, Grocer and Tea Dealer. *Brace & Co.*, Surrey Street, Strand. Jan. 16.
 Blackborow, George Sheppard, Bristol, Wine and Spirit Merchant. *Hare & Co.*, Bristol. Jan. 16.
 Bloom, Joseph Moritz, Brighton, Dealer in Fancy Goods. *Taylor & Co.*, Bedford Row: *Isaacs*, Jefferies Square, St. Mary Axe. Jan. 19.
 Charleton, William, and Joseph Hadley Reddell, Berners' Street, Commercial Road East, White Lead and Colour Manufacturers. *Edwards, Off. Ass.: Ling & Co.*, Bloomsbury Square. Dec. 23.
 Cole, George, Oxford, Wine and Spirit Merchant. *Love & Co.*, Southampton Buildings, Chancery Lane. Jan. 5.
 Calvert, John, Pall Mall, Bowyer, Fletcher and Ivory Turner. *Johnson, Off. Ass.: Bowden & Co.*, Aldermanbury. Jan. 16.
 Davis, James, Birmingham, Victualler. *Smith*, Staple Inn, London, and Birmingham. Dec. 26.
 Dorrington, Charles, Digswell Mill, Digswell Hill, near Welwyn, Hertford, Miller. *Graham, Off. Ass.: Neal*, Threadneedle Street. Dec. 29.
 Dyer, Wm. Richard, Hungerford, Berks, Corn Factor and Baker. *Hall*, Hungerford: *Tilsons & Co.*, Coleman Street. Jan. 12.
 Dickinson, George, Dovor, Kent, Paper Manufacturer. *Kennett*, Dovor: *Hawkins & Co.*, New Boswell Court. Jan. 19.
 Gravenor, Wm., Hatfield, York, Farmer. *Raynes*, Bawtry. Dec. 26.
 Grove, James, and George Grove, Birmingham, Maltsters. *Higg*, Southampton Buildings: *Haywood*, Birmingham. Jan. 2.
 Gillingham, John, Farringdon Street, London, Victualler. *Cannan, Off. Ass.: Eden*, Villiers Street, Strand. Jan. 9.
 Husler, Wm., Woodhouse, Leeds, York, Stone Mason and Beer Seller. *Battye & Co.*, Chancery Lane: *Cooper*, Leeds. Dec. 26.
 Hayward, Isaac Johnson Thomas, Dounfield and Stroud, Gloucester, Brewer and Hop Merchant. *Shearman*, South Square, Gray's Inn: *Paris*, Stroud. Dec. 29.
 Hayter, John, late of Hampstead Heath, and of King's Road, Fulham, Middlesex, Victualler, (now of Kennington Oval, Surrey). *Graham, Off. Ass.: Weches*, Tokenhouse Yard. Jan. 19.
 Haskell, Bartholomew, Watford, Hertford, Coach and Cart Wheelwright. *Whitmore, Off. Ass.: Wingfield*, Great Marlborough Street. Jan. 19.
 Huxham, John, College Street, Upper Thames Street, Ale and Porter Merchant. *Alsager, Off. Ass.: Rowland & Co.*, White Lion Court, Cornhill. Jan. 19.
 Haines, Edward, and Charles Haines, Gloucester, Linen Drapers and Hosiars. *Jones*, Crosby Square: *Smallbridge*, Gloucester. Dec. 29.
 Haddon, James, Liverpool, Merchant. *Miller & Co.*, Liverpool: *Taylor & Co.*, Bedford Row. Jan. 2.
 Hoole, John, Crookes, Sheffield, York, Tanner. *Brooksbank & Co.*, Great James Street, Bedford Row: *Hoole*, Sheffield. Jan. 5.
 Joy, William, Paternoster Row, London, Bookseller; and of Bloomsbury Square, Middlesex, Boarding-house Keeper. *Pennell, Off. Ass.: Williams*, Coleman Street. Jan. 9.
 Jones, Robert, Liverpool, Grocer. *Blackstock & Co.*, Temple: *Booth*, Liverpool. Jan. 9.
 Jackson, James, Maslam, York, Woolstapler. *Taylor & Co.*, Bedford Row: *Prent*, Maslam. Jan. 12.
 Jones, Thomas, Birmingham, Gun Maker. *Clarke & Co.*, Lincoln's Inn Fields: *Wills*, Birmingham. Jan. 12.
 Johnson, Wm., Shelton, Stoke-upon-Trent, Stafford, Ale Seller. *Litchfield & Co.*, Chancery Lane: *Browne*, Hanley, Staffordshire. Jan. 12.
 Kettle, Mitchell, Ware, Herts, Linen Draper. *Clarke, Off. Ass.: Warne*, Leadenhall Street. Jan. 12.
 Kendall, Henry, Edmund Kendall, John Kendall, and Joseph Kendall, Deritend, Aston near Birmingham, Perfumers and Toy sellers. *Milne & Co.*, Temple: *Bewick & Co.*, Birmingham. Jan. 19.
 Lyle, Samuel, Redruth, Cornwall, and also of the Tamer Smelting Works, Beerferris, Devon, Smelter. Messrs. *Smith*, Devonport: *Sole*, Aldermanbury. Jan. 16.
 Lithaby, Thomas, Clifton, Bristol, Mason and Builder. *White & Co.*, Bedford Row: *Short*, Bristol. Jan. 16.
 Linsell, Thomas, and William Linsell, of Piccadilly, Tailors. *Groom, Off. Ass.: Williams*, Alfred Place, Bedford Square. Jan. 19.

Lees, Aaron, Gorton, and Manchester, Manufacturer and Cotton Spinner. *Johnson & Co., Temple : Kershaw, Manchester.* Jan. 19.

Mather, William, Colin Mather, and John Tenney Newstead, Manchester and Salford, Lancaster, Iron-founders, Engineers and Machine Makers. *Hampson, Manchester : Adlington & Co., Bedford Row.* Dec. 26.

Mackie, Thomas, Bear Street, Leicester Square, Victualler. *Gibson, Off. Ass. : Lewis, Arundel Street, Strand.* Jan. 2.

Muddle, James, Dorset, Kent, Silk Mercer; and of Bucklersbury, London, Coffee-house Keeper. *Goldsmid, Off. Ass. : Borradale & Co., King's Arms Yard.* Jan. 2.

Mucklow, James, Birmingham, Publican. *Blackstock & Co., Temple. Suchling, or Hodgson, Birmingham.* Jan. 9.

Mould, William, Francis, Union Place, New Road, Marylebone, Wine Merchant. *Gibson, Off. Ass. : Owen & Co., Mark Lane.*

Mince, George, London Road, Surrey, Tea Dealer and Grocer. *Goldsmid, Off. Ass. : Temple & Co., Great Tower Street.* Jan. 16.

Newall, William, Acton, Chester, Sheep Salesman. *Carver, jun., Nantwich : Johnson & Co., Temple.* Jan. 12.

Piggins, Stephen, jun., Cambridge, Brewer. *Twiss, Cambridge : Lythgoe & Co., Essex Street.* Dec. 29.

Ranley, Henry, Bristol, Builder. *Blower & Co., Lincoln's Inn Fields : Gregory, Bristol.* Dec. 26.

Skelton, Thomas, and John Skelton, Gerrard Street, Soho, Oilmen and Italian Warehousemen. *Green, Off. Ass. : Harpur, Kennington Cross.* Jan. 5.

Snelling, John, Messing, Essex, Grocer. *Witley, Colchester : Stevens & Co., Queen Street, Cheapside.* Jan. 9.

Snowdon, Robert Moore, Malton, York, Draper. *Makinson & Co., Temple : Faden, Leeds.* Jan. 9.

Soulby, Wm., Leeds, York, Corn Merchant and Porter Merchant. *Hattye & Co., Chancery Lane : Rayner & Co., Leeds.* Jan. 12.

Smith, John, Little Warner Street, Clerkenwell, Funeral Carriage Master and Hackneyman. *Cannan, Off. Ass. : Arrowsmith & Co., Devonshire Street, Queen Square.* Jan. 16.

Solomons, George, Minorities, London, Fallow Chandler and Oilman. *Turgand, Off. Ass. : Spyer, Broad Street, Buildings.* Jan. 16.

Sawer, Thomas, Wood Street, London, and of Coventry, Ribbon Manufacturer. *Green, Off. Ass. : Bell & Co., Bow Church Yard.* Jan. 16.

Stone, Robert, Oxford, Surgeon and Apothecary. *Roberson, Oxford : Miller, Ely Place.*

Teasdale, John, Bolton-le-Moors, Road Contractor. *Barker, Gray's Inn Square : Woodhouse & Co., Bolton-le-Moors.* Dec. 29.

Tate, Robert, Regent Street, Jeweller. *Abbott, Off. Ass. : Ford, Lincoln's Inn Fields.* Jan. 2.

Vowles, James Tucker, Bristol, Hat Manufactur-

er. *White & Co., Bedford Row : Arne'd, jun., Bristol.* Jan. 2.

Wythes, Thomas, Northfield and Hibleton, Worcester, Coal Merchant, Hay Dealer and Timber Merchant. *Smith, Chancery Lane : Hill & Co., Worcester and Kidderminster.* Jan. 8.

Welch, William, Brockworth, Gloucester, Corn Dealer and Miller. *White & Co., Bedford Row : Blossome & Co., Dursley.* Jan. 5.

Warner, Richard, Ashby-de-la-Zouch, Leicester, Schoolmaster. *Snelson, Ashby-de-la-Zouch : Capes & Co., Bedford Row.* Jan. 5.

Wathen, Obadiah Paul, Woodchester, Gloucester, Clothier. *Snelson, Ashby-de-la-Zouch : Croome & Co., Caincross, near Stroud, Gloucester.* Jan. 5.

Wayts, Wm., Stoke-upon-Trent, Stafford, Wharfinger. *King, Furnival's Inn : Williams & Co., Stoke-upon-Trent.* Jan. 5.

Wignall, Samuel, Keighley, York, Draper, Silk Mercer, Hosier and Haberdasher. *Makinson & Co., Temple : Atkinson & Co., Manchester.* Jan. 12.

Yeates, John, Brighton, Brewer. *Boys & Co., Brighton : Palmer & Co., Bedford Row.* Jan. 12.

Yates, Wm., sen., of the Old Buffery Works, Worcester, Ironfounder. *Clarke & Co., Lincoln's Inn Fields : Tyndall & Co., Birmingham.* Jan. 9.

PRICES OF STOCKS.

Tuesday, January 23d, 1838.

Bank Stock, div. 8 per Cent. - 206 $\frac{1}{2}$ a 6 $\frac{1}{2}$ a 5 $\frac{1}{2}$
a 6 $\frac{1}{2}$

3 per Cent. reduced - - - - - 92 $\frac{1}{2}$ a $\frac{1}{2}$

3 per Cent. Consols. Anns. - - - 91 $\frac{1}{2}$ a $\frac{1}{2}$ a 2

3 $\frac{1}{2}$ per Cent. Annuities, 1818 - - - 100 $\frac{1}{2}$ a $\frac{1}{2}$

3 $\frac{1}{2}$ per Cent. Reduced Annuities - - - 100 a $\frac{1}{2}$

New 3 $\frac{1}{2}$ per Cent. Annuities, - - - 99 $\frac{1}{2}$ a 100

Long Annuities [- - - - - 15 a $\frac{1}{2}$

Annuities for 30 years - - - - - 14 $\frac{1}{2}$ a $\frac{1}{2}$

India Stock div. 10 $\frac{1}{2}$ per Cent. - - - 264 a 3

Ditto Bonds 4 per Cent. - 52s. a 51s. a 53s. pm.

Ditto to be paid off 30th June - 14s. a 15s. pm.

3 per Cent. Cons. for account 27th Feb. - 91 $\frac{1}{2}$ a $\frac{1}{2}$
a $\frac{1}{2}$ a 2

Exchequer Bills, 1000*l.* - - - 55s. a 57s. pm.

Ditto 500*l.* - - - 55s. to 57s. pm.

Ditto 50*l.* - - - 55s. to 57s. pm.

The Legal Observer.

SATURDAY, FEBRUARY 3, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PROGRESS OF LAW REFORM.

THE real business of the Session of Parliament is now about to commence. Hitherto nothing has been done of immediate interest to our readers. The Civil List before, and the Canada Bill after Christmas, however interesting or important in themselves, have no peculiar bearing on the profession; and we have had nothing whatever to say as to whether the royal allowance should be one thousand more or one thousand less, or whether Mr Harvey should be or should not be on the Pensions Committee.

The time, however, is now coming when we shall have our hands full. We hear of bills and rumours of bills, and have no doubt that the three great unsettled questions relating to Law Reform will be brought on and discussed before Parliament in the present Session. We mean the Abolition of Imprisonment for Debt, the facilitating the Recovery of Small Debts, and Chancery Reform.

The first of these questions remains before a Committee of the House of Lords, and we understand that very little has yet been done in it. The arrival of Lord Lyndhurst, however, will probably expedite its proceedings.

Lord John Russell has given notice, for the 13th instant, of Bills for the Improvement of the Administration of Justice at Quarter Sessions, and we shall then have the exposition of the government plan on this subject. We believe that it is intended to give a civil jurisdiction to these Courts, and thus to satisfy the demand for some kind of provincial justice. We are

inclined, as at present advised, to prefer this plan to extending the jurisdiction of the Sheriffs' Courts; but we cannot express an opinion until we are in full possession of the scheme.

We hear that the Judges of the Court of Exchequer are bestirring themselves with the view of getting an additional Judge appointed in that Court, for the purpose of disposing of the Equity business. We conceive that this would be but a mere temporary expedient, and would not remedy the grievances as to arrears in equity, at present so loudly complained of. The evil lies much deeper, and we think that nothing but a complete revision of the whole administration of equity will reach it.

We are much pleased that Mr. Lynch has been appointed to the vacant Mastership. We do not remember any appointment that has given more general satisfaction to the profession; and we are not only glad of it because we believe that he will ably discharge the duties of his office, but because we trust that he will also turn his attention to the reforms which are necessary in the administration of equity, and because we cannot forget his former exertions in this behalf.*

The opinion that the duties of the Chancellorship must be separated certainly gains ground, not among mere political reformers, but among practical men of all parties. We have very recently adverted to the declared sentiments in favour of this alteration, of the Lord Chancellor, the Master of the Rolls, Mr. Lynch, Mr. Montagu, and Mr. Garratt, all of them well qualified to give an opinion on this subject. We look forward with great interest to its discussion in the House of Commons.

* See 11 L. O. 201.

THE LAW OF CRITICISM.

It may be useful to some of our readers to know how far they may go when they exercise "the ungentle craft." For our own parts, we bear the critical rod with so light a hand, that we do not think that we need any warning on the subject; but for the sake of others, it may be well to define the limits to which criticism may go and not be amenable to the law. With this view we extract the following case. The curious dialogue between Chief Justice Tindal and Mr. Barstow is worthy of our best comic writers.

Libel.—The declaration stated, that before the committing of the grievances by the defendants as hereinafter mentioned, the plaintiff was a grower, seller and exhibitor of flowers: that a certain society, commonly called or known by the name of the Metropolitan Society of Florists and Amateurs, had held a public meeting at a certain house called the Baker's Arms, for the exhibition of flowers, and for the adjudication of certain prizes proposed to be given to the shewers of flowers at such meetings, on which occasion, one of the said prizes of a certain value, to wit, of the value of 15s., was adjudged by the said society to be given to the plaintiff, for certain flowers then and there exhibited by him; and that the defendants falsely and maliciously published in a certain periodical work, called or known by the name of the "Horticultural Journal, Florist Register, and Royal Ladies' Magazine," of and concerning the plaintiff, and of and concerning him as such grower and seller of flowers, and of and concerning the said prize so adjudged to the plaintiff by the society hereinafter mentioned, and of and concerning the said society, and the prizes so distributed by the same society, and of and concerning the plaintiff as a member of such last mentioned society, and exhibitor of flowers, at a meeting thereof, the following libel:—"Sir, you will recollect a mean shabby fellow, named Green, making a great noise about a fifteen shilling prize, and using gross language because he did not receive it directly. The name of Green is to be rendered famous, I believe, in all sorts of dirty work. The tricks by which he, and a few like him, used to secure prizes, seem to have been broken in upon by some judges more honest than usual: and Riley, Dunn, and he, (meaning the plaintiff,) being little kings of growers among the Baker's Arms squad, have formed a new society, in which none who can shew against them, will be allowed to compete. This is the way in which floriculture is to be supported in the East. Societies ought to obtain the list of members of this new club of amateurs, and carefully exclude from their ranks, the knaves who promote, and the fools who join, such a despicable gang. Yours &c."—"If Green be the same man who wrote

an impudent letter to the Metropolitan Society, he is too worthless to notice; if he be not the same man, all we have to say is, that it is a pity two such beggarly souls could not be crammed in to the same carcase. Dunn and Ridley ought to have known better." To this, there was a plea, that the matter was contained in an article. *Barstow*, who was for the defendants, to support the plea.—If the Court recognizes the distinction taken in *Thorley v. Lord Kerry*, 4 Taunt. 355, between oral and written vituperation, it must be admitted, that these censures, unless justified, may form the subject of an action. But according to the principle established by *Carr v. Hood*, 1 Campb. 355, n. a man who exhibits himself publicly, is a fair mark for the shafts of criticism, and an action does not lie for observations confined to the occasion on which he has courted public notice. The whole of the alleged libel is relevant to the plaintiff's floricultural exhibition. [*Tindal, C. J.*—"The name of Green is to be rendered famous in all sorts of dirty work."] Taking that passage with the context, it means dirty work in the exhibition of flowers. [*Tindal, C. J.*—"If he be not the same man, it is a pity two such beggarly souls could not be crammed into the same carcase."] That is also said of him in his character of public exhibitor. [*Tindal, C. J.*—"The ground of attack seems to be, that he withdrew himself from the Baker's Arms squad, to a private society."] By any exhibition the plaintiff lays himself open to criticism, and ought not to complain if its verdict be not always couched in the language of compliment. But

The Court at once determined that this did not fall within the privilege extended to fair criticism by the case of *Carr v. Hood*, and gave judgment for the plaintiff.—*Green v. Chapman*, 4 Bing. N. C. 92.

CONTROVERTED ELECTIONS.

WE have received a pamphlet on "The State of the Law of Controverted Elections." It does not appear to us to contain much novelty on that subject; but we willingly extract the suggestion of the author as to the improvement of the present system. The first election petitions will be referred to committees next week, and we shall probably bring the subject again under the notice of our readers. The writer of the present pamphlet, after alluding to the existing state of the law relating to election petitions, which we stated at some length at the commencement of the present volume, thus proceeds:

"The only remedy proposed hitherto, which seems to us to deserve the consideration of the legislature, is, that the house should come to a resolution, that whatever is once laid down

as law by an election committee, should be in future irreversible, except it be ruled otherwise on an appeal to a select committee, or a committee of the whole House. The Common Law Courts at Westminster would soon become as degraded in public estimation as the election committees, if the judges were to decide according to their own private judgment, irrespective of the opinions delivered by those who have preceded them. 'The laws,' says Montaigne, 'keep up their credit, not for being just, but because they are laws. It is the mystical and the sole foundation of their authority, and it is well it is so.' Indeed, frequent deviations from technical exactness, are fatal to the existence of any sound settled juridical system, which should be rendered as free as the nature of such a science will admit, from all jarring and discordant elements; there are besides a multiplicity of points of minor importance, which may be decided in this way or that way, without prejudice to the interests of justice, but from which it is of the utmost consequence that judges should on no account be tempted to swerve when once they have been decided by an adequate tribunal. The only reason why the great diversity in the qualification in different boroughs, and the obscurity in which its origin was frequently involved previous to the introduction of reform did not occasion a much greater quantity of litigation, was owing to the excellent rule that the last determination of a committee on the right of voting, should in all cases be considered final unless appealed against within six months. This statute does not however apply to the maiden boroughs created under the Reform Act; and the consequence has been, that committees seem to have vied with each other in asserting their independence, and displaying their contempt for the decisions of their predecessors.

"Would it not then be desirable that all committees should be precluded, by a standing order of the House, from departing on any account, from the last determination on any one of the clauses which pretend to fix and define the nature of the qualification, and the condition on which alone it can be enjoyed? It is true, in that case a somewhat difficult question in the present state of the law would arise, as to the precise period from which these last determinations should date the commencement of their inviolability and force.

"There is another remedy, which has repeatedly suggested itself to us at seeing the maze in which the revising barristers were involved, and to which we can see no valid objection. It is, that a declaratory statute should be enacted, to elucidate and explain the principal points of controversy which have been most frequently subjected to the consideration of committees in the sessions of 1833 and 1835.

"In order to prevent the packing and canvassing for committees, which prevails to so great an extent, Mr. Buller has proposed, in mitigation of the evil, that a system of peremptory challenge should be substituted for the present

mode of striking; and so far, we think this precaution might be some improvement on the operation of the present system."

NEW BILLS IN PARLIAMENT.

ELECTION EXPENCES.

The object of this bill as stated in the preamble, is "to define and regulate such expences as by law ought to be allowed in and about the elections of members to serve in parliament." And the proposed enactments are as follow:

1. That any thing in any act contained to the contrary notwithstanding, the expences attendant upon taking the polls at elections of members to serve in parliament, shall be limited, defrayed and borne in the following manner and not otherwise; that is to say, that every sheriff who shall have caused to be erected any hustings or booths for taking the poll at any contested election for any county, riding, parts or division, or who shall have hired any house or other building for that purpose, shall be reimbursed to the full amount of the expense incurred in erecting such booth or booths, or hiring such house or other buildings, provided that the same do not exceed in any case 40*l.* in the whole in respect of the principal place of election for such county, riding, &c. (including therein any cost or charge in respect of hustings); and 25*l.* in the whole in respect of any other polling place for such county, riding, &c. whatever the number of booths thereat may be: and every returning officer for any city or borough in England, except the boroughs of New Shoreham, Cricklade, Aylesbury and East Retford, and the borough of Monmouth, who shall have caused to be erected any booth or booths for taking the poll at any contested election for any such city or borough, or hired any house or other building for that purpose, shall be reimbursed to the full amount of the expense incurred in erecting such booth or booths, or in hiring such house or other building: provided always that the same shall not exceed 25*l.* in the whole for any one booth, house or other building; and every returning officer for the several boroughs of New Shoreham, Cricklade, Aylesbury and East Retford respectively, who shall cause to be erected any booth or booths for taking the poll at such last mentioned boroughs respectively, or hired any house or other building for that purpose, shall be reimbursed to the full amount of the expense incurred in erecting such booth or booths, or in hiring such house or other building: provided that the same shall not exceed in any case the sum of 25*l.* in the whole in respect of any one of the polling places for any of such last-mentioned boroughs; and all sheriffs and all returning officers for all the cities and boroughs in England (except the borough of Monmouth), shall be reimbursed to the full amount of the expense incurred in the employment of deputies and clerks to take the poll

at any contested election as hereinbefore directed: provided that the expense of each deputy shall not exceed 2*l.* 2*s.* and that the expense of each clerk employed in taking the poll shall not exceed 1*l.* 1*s.*; and every sheriff and other returning officer shall, in case of a contested election, over and above the expenses hereinbefore specified, be reimbursed to the full amount of the sum which shall have been incurred in respect of poll-books, stationery, advertisements, proclamations, and other contingent expenses of such election: provided that the same shall not exceed 5*l.* in the whole for any principal place of election, and the like amount for any other polling place, for any county, riding, &c. or for any one polling place in any one of the boroughs of New Shorham, Cricklade, Aylesbury, or East Retford, or for any booth, house or other building erected or hired at any election for any other city or borough in England, (except the borough of Monmouth); and at every election for a knight or knights to serve in parliament for any county, riding, &c. when there shall not have been any contest for such county, &c. nor any booth or booths erected or poll taken, the sheriff shall be reimbursed the full amount of the expenses incurred by him for stationery, advertisements, proclamations and other contingent expenses of such election; provided the same do not in any case exceed in the whole 10*l.*; and the amount of the several sums so as to be repaid to any sheriff as hereinbefore directed, shall be paid by the treasurer of the particular county, out of any public money in his hands, and he shall be allowed all such payments in his accounts; and at every election for members to serve in parliament for every borough or city, when there shall not have been any contest for such borough or city, the returning officer shall be reimbursed the full amount of the expenses incurred by him for stationery, advertisements, proclamations and other contingent expenses of such election: Provided the same do not in any case exceed in the whole 5*l.*; and the amount of the several sums so to be repaid to any returning officer for any city and borough in England (except the borough of Monmouth) shall be paid to him by the overseers of the poor of the several parishes and townships within such city or borough, out of the money collected, or to be collected, for the relief of the poor in such parishes or townships in proportion to the number of persons placed on the register of voters for each parish or township: provided that no such sums as hereinbefore mentioned shall be repaid to any sheriff or other returning officer, unless the accounts thereof shall have been laid before the justices of the peace for the particular county, riding or parts at the next quarter sessions after the expenses shall have been incurred and shall have been allowed by the Court, or, in the case of cities or boroughs, before the mayor and burgesses of the particular city or borough (or other persons forming the body corporate thereof, by whatever name, style, or title they may be called), at a meeting summoned for

the purpose, and of which due notice shall have been given.

2. That the returning officer for the borough of Monmouth, and for each of the several boroughs in Wales mentioned in the second column of the Schedule (E.) 2 W. 4, (the Reform Act), and for the borough composed of the five towns of Swansea, Loughor, Neath, Aberavon and Kenfig, and for the borough of Brecon, shall discharge the expenses attendant upon all contested elections for such boroughs respectively, and shall be repaid the amount of the same several sums as are hereinbefore fixed and allowed with respect to expenses incurred by returning officers for cities and boroughs in England, which said several sums shall be repaid to them by the overseers of the poor of the several parishes and townships within each such borough or place sharing in the election therewith respectively, in proportion to the number of persons placed on the register of voters for each parish or township: Provided, that the same shall have been duly allowed by the mayor and burgesses of the particular city or borough, in the same manner as hereinbefore provided with respect to cities and boroughs in England.

3. That no sheriff or other returning officer for any county or borough, nor any person employed by or acting under the authority of such sheriff or other returning officer, shall be prevented from erecting any booth or booths for taking such poll in any public street, highway, square or other open place, nor from breaking the soil or pavement of any such public street, square, highway or other open place, for that purpose, nor be liable to any action at law, or to be indicted for any nuisance in respect of any such act, nor for any damage done in consequence of erecting any such booth or booths: Provided always, that such sheriff or other returning officer shall, within a reasonable time after the election, repair and make good the damage so done to such soil, pavement or otherwise.

4. And reciting that divers demands have been made upon candidates at elections, by sheriffs, under sheriffs, returning officers, clerks of the peace, town clerks, and other persons, for money claimed to be due in respect of the employment of assessors and other legal advisers; sheriffs, under sheriffs, returning officers, clerks of the peace, town clerks, sheriffs' messengers, special constables and other peace officers for keeping the peace at elections; stewards' bailiffs, serjeants-at-mace, magistrates' clerks, headles, criers, and other officers and persons employed at elections, for receiving the writ of election and making the return thereto; and in respect of charges for the attendance of solicitors at such elections; and in respect of expenses incurred in coach-hire, tavern and other personal expenses for stationery and printing, and in other various matters incidental to and connected with the proceedings at elections: And that no candidate ought to be subjected to any such demands; be it therefore enacted, any law, statute, practice or usage to the contrary not-

withstanding, that no sheriff, under sheriff, sheriff's deputy, returning officer, clerk of the peace, town clerk, assessor or other legal adviser of a returning officer, steward, bailiff, serjeant-at-mace, sheriff's messenger, magistrate's clerk, headle, crier, constable or other officer or person officially employed at any future election, shall demand or receive from any candidate any gratuity, fee or reward, or any money, security or valuable thing or thing exchangeable for value whatsoever, for or in respect of any service or work performed, or to be performed, or pretended to have been performed, at any such election, either by himself or by any other person employed by or under his direction; nor shall any other person so employed by or under such direction demand or receive from any such candidate any gratuity, fee or reward, or any money, security or valuable thing, or thing exchangeable for value whatsoever, in respect of any service or work performed, or to be performed, or pretended to have been performed at any such election; nor shall any of the officers or persons aforesaid, or persons employed by or under the direction of any such officer or other person aforesaid, demand or receive from any candidate any money, security or valuable thing, or thing exchangeable for value whatsoever, for goods supplied, or to be supplied, or pretended to have been supplied, or for or in respect of any money advanced or paid, or to be advanced or paid, or pretended to have been advanced or paid, or for or in respect of any expenses or liabilities incurred, or to be incurred, or pretended to have been incurred, in, about or relating to any such election, or any proceeding thereat; nor shall any candidate, or person acting as the agent of any candidate in that behalf, either voluntarily or at the demand or request of any other person, give, pay or deliver any such gratuity, fee, reward, money, security or other valuable thing, or thing exchangeable for value whatsoever, for or in respect of any such service or work performed, or to be performed, or pretended to have been performed, goods supplied, or to be supplied, or pretended to have been supplied, money advanced or paid, or to be advanced or paid, or pretended to have been advanced or paid; expense or liability incurred, or to be incurred, or pretended to have been incurred respectively, in, about or relating to any such election or any proceedings thereat; and any such officer or other person as aforesaid, or person employed by or under the direction of any such officer or other person aforesaid, who shall demand or receive from any candidate any such gratuity, fee, reward, money, security or other valuable thing, or thing exchangeable for value, for or in respect of any such service or work performed, or to be performed, or pretended to have been performed; goods supplied, or to be supplied, or pretended to have been supplied; money advanced or paid, or to be advanced or paid, or pretended to have been advanced or paid; expense or liability incurred, or to be incurred, or pretended to have been

incurred respectively, in, about or relating to any such election, or any proceedings thereat; or any candidate, or person acting for or as the agent of any candidate in that behalf, who shall voluntarily, or at the demand or request of any other person, give, pay or deliver any such gratuity, fee, reward, money, security or other valuable thing, or thing exchangeable for value, for or in respect of any such service or work performed, or to be performed, or pretended to have been performed; goods supplied, or to be supplied, or pretended to have been supplied; money advanced or paid, or to be advanced or paid, or pretended to have been advanced or paid; expense or liability incurred, or to be incurred, or pretended to have been incurred respectively, in, about or relating to any such election or proceeding thereat, shall forfeit and pay *treble* the value of every such gratuity, fee, reward, sum of money, security or valuable thing, or thing exchangeable for value, so demanded, received, paid or delivered to any person, who shall sue for the same in any of her Majesty's Courts of Record at Westminster, together with full costs of suit: Provided that no such action shall be commenced after the period of *two* years shall have elapsed from the time of such demand, receipt, payment or delivery: Provided also, that nothing herein contained shall extend to or affect any payment or right of demand authorized by this act.

5. Returns not liable to stamp duty.

6. Returns, &c. to be sent by post, free of postage.

7. Penalty on officers for breach of duty. Limitation of action to three months.

8. Interpretation clause.

9. This act not to extend to the Universities.

10. Act to apply to England and Wales.

11. Act may be altered this session.

PRESENT STATE OF THE LAW WITH REGARD TO SOLICITORS' LIENS.

In a recent article under this head,* we endeavoured to show that a solicitor's lien upon papers in a suit actually in progress, is virtually at an end, *when he discharges his client*.

We propose now to consider, first, what acts on the part of a solicitor will amount to such a severance of the connection between him and his client as to bring him within the rule above stated; and secondly, in what manner, and under what circumstances a solicitor may refuse to continue

* See p. 196, *ante*.

proceedings carried on by him to a certain extent, or, according to the language of the reports, "to discharge his client."

The first part of our subject came under the consideration of the Court in the recent case of *Heslop v. Metcalf*, where the solicitor insisted, that as his client had failed in supplying him with necessary funds, he was justified in refusing to proceed further in the suit, and that his lien ought not to be affected by such refusal; but the Chancellor decided against this doctrine, and in delivering his judgment observed, that in his experience he had met with several instances where solicitors had commenced an expensive litigation although they knew the suitor's means were not sufficient to carry it to a conclusion, and after the suitor's funds were exhausted had refused to proceed further; that he was aware the public was safe from such conduct on the part of respectable practitioners, but that he could not lay down one rule for solicitors who conducted themselves reputably, and another for those against whom his observations were directed.

We may therefore conclude, that one mode by which a solicitor discharges his client, is where he refuses to go on without being supplied with funds, and that although in such a case the Court will not compel him absolutely to give up the papers in a suit, yet that his lien upon them is so far destroyed as that any other solicitor, disposed to continue the proceedings, will be entitled to inspection and production, and even to temporary possession, of all papers necessary for enabling him to conduct the cause.

Another mode of producing the same result, is, when a solicitor attempts to transfer his client's business and papers to another person, and this perhaps affords stronger grounds for the rule than the last; for by such a course he not only discharges his client, but himself also. Thus in *Colegrave v. Manley*,^b referred to in our former article, the solicitor having assigned his business to another solicitor, and having written to his client informing him of the fact, the Court ordered the papers to be delivered up to the new solicitor, upon his undertaking to hold them subject to the former solicitor's lien, notwithstanding it was proved that the first solicitor had, previous to any application being made to the Court, offered to continue the proceedings himself.

Whether a solicitor's arresting his client,

or bringing an action for recovery of his costs, would be deemed such a breach of his retainer, as to bring him within the rule we are discussing, does not appear to have fallen directly under consideration in any of the cases upon solicitors' liens. We have met with one case where Lord Lyndhurst seemed to intimate that an arrest had that effect; but in *Heslop v. Metcalf*, neither the Vice Chancellor nor the Chancellor even alluded to the actions brought by the solicitor for recovery of his costs, as a ground for determining that he had discharged himself, although the fact of the client having been arrested was frequently brought under the notice of both those Judges; but the principal ground upon which they decided was, *that the solicitor had refused to proceed without being supplied with funds*; and upon this point the Vice Chancellor said, "he, (the solicitor) appeared to ask too much when he demanded payment of the whole costs, and certainly he was not justified in making the payment of the costs to be incurred, a condition of his proceeding with the suit."

It will be found on referring to the cases which will come under review in pursuing the second branch of our enquiry, as stated at the commencement of this article, that a solicitor may at any time refuse to proceed further in a suit, *after having given reasonable notice*, unless his costs be paid or secured. If, then, he is justified in such a refusal, there seems little reason to suppose, that he cannot in like manner avail himself of any remedies the law may give him, by proceedings or otherwise, for obtaining payment of his costs, without affecting his lien upon papers in a cause, unless he shall have expressed or shewn an intention to take no further steps in the cause, and in fact to discharge his client.

We will take an early opportunity of continuing our remarks on this important subject, and of proceeding with our proposed second enquiry.

NEW TABLE OF COSTS IN THE COMMON LAW COURTS.

In all actions commenced upon or after 1st January, 1838, and in all actions previously commenced in which further proceedings shall be taken, the Masters, on the taxation of costs, will allow as follows:

^b 1 Turn. & Russ. 400.

PLAINTIFF'S COSTS.

	In cases above £20. £ s. d.			£20 and under. £ s. d.		
	<i>as usual.</i>			<i>as usual.</i>		
Instructions to prosecute						
Affidavit of Debt			<i>Do.</i>			<i>Do.</i>
Summons, Capias, or						
Detainer	0	14	6	0	12	6
Alias or Pluries	0	12	0	0	10	0

Arrest.

Paid for Warrant—						
in London and Middlesex	0	2	6			
in other counties not exceeding 100 miles from London ...	0	5	0			
not exceeding 200 miles	0	6	0			
exceeding 200 miles ..	0	7	0			
Attending to procure same	0	3	4			
Attending to instruct Officer (<i>as usual</i>)	0	3	4			
Paid Caption Fee (according to Sheriffs' Table of Fees)						

Detainer.

Paid lodging same and attending	<i>as usual.</i>					
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Service of Summons or Capias.

Copy Service	<i>as usual.</i>			<i>as usual.</i>		
Affidavit of Service	<i>do.</i>			<i>do.</i>		
Appearance, Sec. Stat. .	0	7	6	0	6	0

Declaration.

Where case within the printed directions to the Taxing-Officers in March, 1834 — Instructions, &c. &c.	1	18	0			
	<i>as usual.</i>					
				<i>Instructions and actual length as usual.</i>		

Judgment by Default.

Where case within the above printed directions—instead of the £1 : 11 : 4 there mentioned (including Rule to Plead, 2s.) ..	1	3	2			
(Exclusive of demand of Plea, if made.)				<i>Rule to Plead, 1s. 6d.</i>		
Paid Signing Judgment						
Ushers and Docket	0	4	0	0	4	0
Attending to sign Judgment	0	3	4	0	3	4

Issue.

Paid entering						
Attending	0	3	4	0	3	4
Ushers and docket	0	4	0	0	4	0

Record.

Ingrossing, &c. and Fee on passing	<i>as usual.</i>			<i>as usual.</i>		
Venire	0	6	0	0	6	0

In cases above £20. £ s. d. £20 and under. £ s. d.
Distringas 0 7 0 .. 0 7 0
Where less than £20 recovered at Nisi Prius.

Writ of Trial.

If of common length ..				0	14	0
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Subpoena.

Subpoena before Judge	0	7	0			
before Sheriff, or where less than £20 recovered at Nisi Prius				0	5	0

Final Judgment—Taxing Costs, &c.

Attending to sign Final Judgment <i>previously</i> to taxing Costs on Postea, Writs of Trial, Writs of Inquiry, and Rules to compute ..	0	3	4	0	3	4
Attending Taxing				<i>as usual.</i>		
Attending at Westminster to get Final Judgment entered on Roll	0	3	4	0	3	4
Fee to Officer abolished.						
Fi. Fa. or Ca. Sa.	0	8	0	0	7	0
Paid for Warrant.						
Attending for same	0	3	4	0	3	4
to instruct Officer	0	3	4	0	3	4
Term Fee and Letters				<i>as usual.</i>		

DEFENDANT'S COSTS.

Instructions to defend ..	<i>as usual.</i>			<i>as usual.</i>		
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Special Bail.

Bail-piece — Affidavits, Attendances exclusive of Fees paid.				<i>as usual.</i>		
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Bail Bond.

The Fees paid pursuant to the Sheriff's Table.

Appearance.

Entering and Fee	0	7	0	0	6	0
Notice thereof, Copy and Service	0	4	0	0	3	0
Searching for Declaration				<i>as usual.</i>		
Paid taking Declaration out of the Office.				Nil.		Nil,
Summons for time to Plead—Copy and Service	0	4	0	0	4	0
<i>In Term.</i>	0	4	0	0	4	0
<i>In Vacation.</i>	0	5	0	0	5	0
Attending	0	3	4	0	3	4
Order, Copy and Service						
<i>In Term.</i>	0	4	0	0	4	0
<i>In Vacation.</i>	0	5	0	0	5	0
Attending to sign Judgment of Non Pros ..	0	3	4	0	3	4
Ushers and Docket	0	4	0	0	4	0
Attending to enter Issue where not done by Plaintiff	0	3	4	0	3	4
Usher and Docket	0	4	0	0	4	0

	In cases above £20.			£20. and under		
<i>Trial, &c.</i>	£	s.	d.	£	s.	d.
Subpoena	0	7	0	0	5	0
Attending to sign Final Judgment on Postea or Writ of Trial	0	3	4	0	3	4
Attending taxing Costs.	<i>as usual</i>					
Attending to get Final Judgment entered on Roll	0	3	4	0	3	4
Fee to <i>Officer</i> abolished.						
Fi. Fa. or Ca. Sa	0	8	0	0	7	0
Paid for Warrant.						
Attending for same	0	3	4	0	3	4
Attending to instruct officer	0	8	4	0	3	4
<i>Prisoners.</i>						
Proceedings by	Nil.			Nil.		
<i>Money into Court.</i>						
Attending to pay Money into Court	0	6	8	0	3	4
-----to take it out of Court ..	0	10	0	0	6	8
For all other matters, the usual fees, attendances, &c. are allowed, in addition to what is actually paid.						

PROFESSIONAL EMOLUMENTS.

[We very gladly give room to the following communication from a gentleman, who for learning, talents, and respectability, is a great ornament to his branch of the profession, and we beg to call the attention of our readers to his statements.]

A correspondent on "the Emoluments of Attorneys,"^a has taken a more correct view of the profits of his future profession than it is probable many of his fellow-students have done; and he will doubtless be surprised to learn, that low as he has discovered the average annual profits of a solicitor to be, he has not nearly arrived at the truth, and in order that they who are now commencing their legal career, may not either pursue it, or abandon it, in disappointment and disgust, I will offer to them some few remarks, which they will perhaps receive with complacency, as coming from one who has long trodden the path they are now about to enter.

The law and physic, men anciently called the money-getting professions, but so far as the law is concerned, (and I suspect the numerous medical practitioners of the present day will concur in my observations, so far as their profession is concerned), such an advantage applies to it no longer. I speak, of course, in a general sense, excluding from any considerations those offices of hereditary legal, almost regal, clients' receiverships, and other advantages, which are far better provisions than any noblemen's younger sons can obtain

from their fathers; and which, as they are few in number, so ought they to be entirely out of the calculation of my young friends.

The subject of the emoluments of our branch of the profession, was called to my attention some few years since when law reforms were very popular, and I took some trouble to gain information and knowledge of our riches, for the sake of undeceiving those, exercising a temporary authority over us, who did not bear us good will, and who had become ignorantly jealous of the profits of solicitors and attorneys. The result of my investigation was, that the whole income of our branch of the profession, divided amongst all its members equally, would not give to each a clear income of so much as 300*l.* per annum. Since the period when these inquiries were made, many new laws have passed to the pecuniary prejudice of the legal practitioner, some of them beneficial to the public, some injurious, and no one has perhaps done more mischief than that which was designed to do us mischief, the bankruptcy act, by which the income formerly earned by solicitors is now very unnecessarily, and as I consider unjustly, transferred to official assignees, whose charges are fourfold the amount of those which were allowed to solicitors.

It is not necessary to enter into particulars to shew why other sources of the solicitor's income have become much deteriorated within the last ten or fifteen years, since the truth is of universal acknowledgment, but it must not be overlooked that the increase of population has aided the mischief, if I may use such a term; by overstocking our profession, as well as that of every other pursuit in the empire.

It is an opinion amongst those who have no knowledge either of our labours or our profits, and it is not impossible that the young, and the sanguine and the inexperienced, may entertain the same opinion, that the solicitor of good connexions and attentive habits cannot eventually fail of success; and this success seems to me to be estimated at something about 1000*l.* per annum. That he cannot, under God's blessing, fail of success, I verily believe; but that he can obtain such an income (I speak of the body of solicitors, not of an individual,) I am verily assured is impossible, since the multiplication of 1000*l.* by the number of solicitors, will shew him that the produce is greater than the sum which can possibly be received by the profession as their net income. The question, however, is capable of minute investigation.

To earn a net income of 1000*l.* per annum, there must be an establishment of clerks, which, with rent, taxes, stationery, coals, certificate, servants, &c. &c. will cost at the least 350*l.* per annum.

There must be a capital of 1000*l.* at the least, which may be called 500*l.* per annum.

I shall consider any one fortunate whose bad debts amount to no more than 5 per cent. on his annual bills, not his annual net profits. To prevent over statements, however, I will in this estimate only charge the loss on the net

^a See p 217, ante.

income, and I therefore put it at 50*l* per annum.

These sums will make an annual *net* income or profit of 1450*l*. necessary to be derived from the clients, in order to give the solicitor his net income of 1000*l*. per annum.

The long vacation affords no opportunities of *profit* to the man of business: it is well if he then pay the expenses of his establishment by his earnings—for should he not want recreation, his clients will—should he be ready to proceed with his suits and causes, the Judges will not be; and he may calculate that either from this vacation, or from other holidays, or accidental circumstances occasioning absence, whatever earnings he derives in the course of the year, *must be made in a period of ten months*, for there will certainly be *two months* in every year, on an average, when he will be disabled from pursuing his vocation with *profit*.

It follows then, that 1450*l*. must be earned in ten months; that is to say, the sum of 145*l*. per month—or reckoning twenty-six week days to the month, upwards of 5*l*. 10*s*. per day, unceasingly; for if your labours cease for one day the succeeding sun must see the labourer blessed with twofold profit, or his income will fall short of the estimate. And should he have the happiness of being engaged much at the assizes, or in the Courts, where he will receive his two guineas per day, he will have a very long arrear of toil to overtake his lost daily stipend of 5*l*. 10*s*.

Although the attainment of such an income as I have described, is now, and must continue to be, in the power of *very few* of the multitude flocking through the portals of the law, yet let not the many well educated, well bred, talented and high principled sons of gentlemen who are looking forward to tread in our places, consider that this or any other profession has no inducements beyond pecuniary advantage; altered as is the state of the law, yet we are perhaps not yet quite so unworthily paid as the church, the army, or the navy. We must be content, like our brothers and friends in those professions, to lower our views, to dissipate the golden dreams of youth, and ally ourselves more closely to high character, ingenuous conduct, and disregard of wealth; and, unless I mistake greatly, there never was a race of young men entering the law, so strongly bespeaking in appearance the possession of such qualities, as the class who now throng to be admitted. G.

NEW RULES OF COURT.

Hilary Term, 1838, 1st Victoria.

In the Queen's Bench.

Whereas, by the practice of this Court in all actions of ejectment, it is necessary that the plea and consent rule should be filed at the chambers of one of the Judges of the same Court, It is HEREBY ORDERED,

that from and after the last day of this present term, the said practice be discontinued: and in all such actions the plea, with the consent rule annexed thereto, be delivered in like manner as pleas in other actions, the defendant's appearance being first entered with the proper officer as heretofore.

(Signed) DENMAN. J. WILLIAMS.
J. LITTLEDALE. J. T. COLERIDGE.
J. PATTESON.

It is ORDERED that the 17th article of the rule made in Hilary Term, 2 W. 4, for regulating the practice of all the Courts of King's Bench, Common Pleas, and Exchequer of Pleas, be henceforth annulled; and that in all cases, special bail may be justified before a Judge at Chambers, both in term and vacation.

It is ALSO ORDERED that no rule for a special jury be granted on behalf of any defendant or plaintiff in *replevin*, except on an affidavit either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case no such rule is to be granted, unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn up at any time.

It is FURTHER ORDERED, that henceforth every rule of Court delivered out in vacation shall be dated the day of the month and week on which the same is delivered out, but shall be entitled as of the term immediately preceding such vacation.

(Signed) DENMAN. J. PARKE.
N. C. TINDAL. J. B. BOSANQUET.
ABINGER. C. H. ALDERSON.
J. A. PARK. J. GURNEY.

STATE OF THE LAW BILLS BEFORE PARLIAMENT.

No progress has been made in the Bills for the Alteration of the Law since last week. See p. 239.

Against the Imprisonment for Debt Bill, petitions have been presented to the House of Lords from the Committee of the Liverpool Guardian Society for the Protection of Trade; and the President, Vice President, and Directors of the Chamber of Commerce and Manufactures at Manchester.

Lord Ashburton has been added to the Select Committee.

Notice has been given by Lord John Russell for the 13th February, of Bills relating to the administration of Justice at Quarter Sessions in England and Wales.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—EXCEPTIONS TO REPORT.

Exceptions filed by defendants to a Master's report, were not set down for hearing until after an order was made to confirm the report. That order having been improperly obtained as against the excepting defendants, they, without setting it aside, were allowed to restore their exceptions and set them down for hearing, although an order had been made in the mean time to take them off the file.

This was a motion to discharge an order of the Vice Chancellor, directing exceptions to the Master's report to be taken off the file, with costs. It appeared that the order nisi to confirm the Master's report was duly served on the 23d of June last, on which day also, exceptions to the report were filed on behalf of the defendants, and their petition for an order to set down the exceptions for hearing was answered on the 25th of June, but by reason of the absence of the solicitor from town, they were not set down until the 6th of July. On the 5th of July, the plaintiff, upon motion of course, obtained an order to confirm the Master's report absolutely, except as against *B.* and *S.*, two of the defendants; but on being served with the defendant's order for setting down the exceptions for hearing on the 6th, the endorsement on the motion paper was altered by adding the names of *B.* and *S.*, and the registrar next day drew up from that endorsement, the order to make the report absolute; it was not drawn up until after service of the order to set down the exceptions. On the 15th of July, the plaintiff gave notice of motion to discharge this last order, and to direct the exceptions to be taken off the file. The Vice Chancellor heard that motion and made an order accordingly with costs.

Mr. *Jacob* now moved to discharge his Honour's order with costs, and after stating the before mentioned facts from an affidavit, he insisted that the order of the 5th of July to confirm the report, was improperly obtained. It was not drawn up until after the defendant's order to set down the exceptions was served on the plaintiff. Then the endorsement on the motion paper was altered for confirming the report against all the defendants, and from the endorsement, the order was drawn up next day, without production of the certificate of default of shewing cause against the confirming the report. Supposing the order to take effect, not from the time of drawing it up, but from the moment it is pronounced, still, he submitted, that this order did not operate to confirm the report as against the two defendants who were excepted in the motion for the order, or prevent them from setting down the exceptions for hearing.

Mr. *Wakefield* for the plaintiff. The order nisi to confirm the report was served on the 23d of June, and being an eight-day order, it expired on the 30th of June, *Munners v.*

Bryan.^a The defendant's exceptions were filed on the 23d, and the order to set them down was obtained on the 25th of June, but the filing of exceptions and the obtaining of an order to set them down, are not sufficient to prevent the confirmation of a report. The exceptions were not in fact set down until the 6th of July; was the plaintiff to await the leisure of the defendants? Were suitors to be delayed because a solicitor thought proper to be absent? The certificate of the defendant's default to shew cause against the report, was obtained at the proper office on the 5th of July; the motion was made on the same day upon that certificate, and the order to make the report absolute was obtained of course. The registrar drew up the order upon production of the certificate and motion paper, neither of which usually contains the names of all the defendants. There was no erasure or interlineation in these papers. If this order was improperly obtained, the defendants ought to have moved to set it aside before the 15th of July. The *Vice Chancellor* thought they were guilty of negligence, but their negligence now is greater, as it was not until the 27th of October last, they gave notice of this motion with a view to enable them to argue their exceptions.

The *Lord Chancellor*.—The *Vice Chancellor's* order of the 15th of July was correct, the order of the 5th of July not being then impeached. But that order is now impeached, the whole question is opened to an inquiry whether, on the 6th of July, when the exceptions were set down for hearing, an order had been then obtained for confirming the report absolutely against the defendants. These defendants, who were excepted from the order as pronounced or made, had a right to come next day, if no order had been made to confirm the report against them. The whole question seemed to turn upon the facts stated in the affidavit, that when the defendants set down the exceptions on the 6th of July, there was no order then made to prevent their setting them down. That being his view, he should discharge the order to confirm the report, and to take the exceptions off the file, with the defendant's costs of this motion against the plaintiff, who must also repay them the costs paid by them on the motion below.

Gibbs v. Hooper, at Westminster, Nov. 17, 1837.

Vice Chancellor's Court.

COSTS.—TAXATION OF AGENT'S BILL.

This Court has a general jurisdiction, independent of statute, to refer an agent's bill of costs for taxation, but the order of reference is only to be obtained on notice to the agent; and where he has retained in his hands part of the costs, the balance only is to be tendered to him or deposited in Court.

There is a short report in vol. 14 of Legal

^a 1 Mylne & Keen, 450; S. C. 5 Sim. 147.

Observer, p. 42, of an order made in this matter, whereby it was declared that an order obtained *ex parte* to tax an agent's bill of costs was irregular, and that the proper course to obtain a valid order for such taxation was by giving notice to the agent, and tendering or depositing in Court the full amount of the bill, and the costs of taxation. The Court was not then bound to decide whether it had jurisdiction to order a bill for agency to be taxed at all. A petition raising that question was now presented. The facts were shortly these:—A London solicitor, Mr. Edward Jones, employed Messrs. Humphreys, solicitors in Wales, to prosecute as his agents there a suit against a Mr. Roberts residing in Wales, for a debt of 250*l*. Roberts paid the debt to Messrs. Humphreys, and they remitted 180*l*. thereof through their London agent to Mr. Jones, retaining 70*l*. in the payment of their bill of costs, which was 73*l*. 3*s*. 4*d*., and Mr. Jones gave a receipt for the 180*l*., describing it as the balance due after deducting the costs. Mr. Jones afterwards obtained on petition an *ex parte* order for taxing the bill. That order was discharged as irregular.^a An amended bill of costs was then delivered by the agents. Mr. Jones now presented another petition for an order to tax the bill, and served the agents with notice thereof, and tendered to them the balance of 3*l*. 3*s*. 4*d*.

Mr. Knight Bruce and Mr. Ayrton, for the petitioner, stated the facts of the case, and the grounds upon which the order *ex parte* was discharged (for which see former report). The Court, they contended, was enabled under its general jurisdiction, anterior to and independent of the acts 2 G. 2, c. 23, and 12 G. 2, c. 13, to order an agent's bill to be taxed; and that doctrine was sustained by the observations of Lord Eldon in the case of *Ostle v. Christian*.^b The contrary decision in the case of *Weymouth v. Knipe*,^c in the Court of Common Pleas, ought not to be allowed to prevail in this Court against the authority of decisions by Lord Hardwicke and Lord Eldon. (See Beames on Costs, p. 308.) The costs were already paid, except 3*l*. 3*s*. 4*d*., which was tendered. *Paget v. Nicholson*.^d

Mr. Jacobs and Mr. Edwards for Messrs. Humphreys.—There was no better reason for taxing the solicitor's agent's bill than for taxing the bill of the solicitor's conveyancer or stationer. *Wildbore v. Bryan*.^e By the sixth section of the 12 G. 2, c. 13, it was enacted that the power first given by the 2 G. 2, c. 23, to refer bills of costs for taxation, without paying or depositing the amount in Court, was not to extend to any bill of fees or disbursements between one attorney and another,

but he may resort to such remedy as he had before that act. On that view the Court of Common Pleas decided *Weymouth v. Knipe*. This Court had no general jurisdiction to order an agent's bill to be referred to taxation, without payment of the money into Court. *Ostle v. Christian*. *Lees v. Nuttall*.^f

The Vice Chancellor.—The Courts of Law hold that they have no jurisdiction beyond what the statute confers; but I am bound by what has taken place in this Court. If I find an uniform practice, and a series of decisions and orders of the Court, I am bound to follow them; and it is of no use to inquire how this jurisdiction was assumed by the Court. I have before me an order granted by the Master of the Rolls in 1746, in *Benstead v. Barefoot*.^g That order was the subject of discussion as appears in the Registrar's book before me. An attempt was made in July, 1746, to discharge it, but no order was made. Setting aside what took place before Lord Thurlow in *Corner v. Hake*,^h incorrectly reported in 2 Cox, 173, I have the opinion of Lord Eldon in *Ostle v. Christian*, that it must be taken to be the uniform practice, for if, according to Lord Eldon's opinion, "a solicitor could not obtain the taxation of his agent's bill without bringing the amount into Court," it must be inferred that fulfilling that condition an agent's bill is taxable. And in *Lees v. Nuttall*, before the present Lord Chancellor, when Master of the Rolls, the latter part of his judgment necessarily shews that there was a jurisdiction upon application of a solicitor to direct the taxation of an agent's bill, for he relied on the special circumstances in shewing why he discharged the order. I therefore think it the practice to direct the taxation of an agent's bill. I can easily make out that this Court exercises a larger jurisdiction than a Court of law. This Court sets the example to Courts of law. I see no expressions in the statutes referred to which take away the general jurisdiction of this Court. The statute 2 Geo. 2, c. 23, s. 23, states, that an attorney's bill could not be taxed unless an action was depending, nor without bringing the money into Court, which shews that the rule at any rate was to tax an agent's bill, though upon terms. What creates a difficulty in this case is the delivery of the second bill. I think the order should be so made as to have that second bill taxed. I think there is nothing in the circumstances of the receipt given by Jones. Let that second bill be re-delivered and taxed, reserving the costs. Let the balance of the bill be paid to the agent without prejudice.

Jones v. Roberts.—At Westminster, January 11, 1838.

^a 14 Legal Observer, 42.

^b 1 Turn. & Russ., 324.

^c 3 Bing. N. S. 387.

^d 8 Price, 680.

^e Beames on Costs, 361.

^f 2 Myl. & K. 284.

^g 1 Dick. 112.

^h 2 Cox, 173.

Queen's Bench.

[Before the Four Judges.]

PROHIBITION.—JUDICIAL COMMITTEE.

Where a case is before the Judicial Committee of the Privy Council on an appeal from an Ecclesiastical Court, though that case may depend on a common law rule, this Court will not presume that the Judicial Committee will decide wrongly, and will not, therefore, issue a prohibition to prevent it from proceeding with the appeal.

A rule had been obtained for a prohibition to issue to the Judicial Committee of the Privy Council, and to the Churchwardens of Kensington, to prevent them from further proceeding to enforce the payment of a church rate. A bill had been exhibited in the Ecclesiastical Court against Mr. Farmer in order to enforce payment of a rate made in 1833, and entered on the books in the following form:—"A rate or assessment, made on the 28th of January, 1833, by the churchwardens and overseers of the parish of Kensington, in vestry assembled, for and towards defraying and indemnifying the churchwardens, &c., against all expenses touching the office of churchwarden from Lady-day, 1833, to Lady-day, 1834." Mr. Farmer objected to this rule as in part retrospective, and also on the ground that it was unequal. A libel was exhibited in the Ecclesiastical Court, and Mr. Farmer put in an answer, and then exhibited fresh matter, which by the practice of that Court entitled him to an answer from the other side. He alleged that the rate was not equally assessed, that it was in part retrospective, and that by the accounts put in by the churchwardens a portion of it appeared to have been actually expended between Lady-day 1833, and the day when it was made; and that several hundred pounds had been expended even previously to that period in the payment of debts contracted before the parties making the rate had become churchwardens. In their personal answer the churchwardens admitted the former and denied the latter part of the statement. When the case came before Dr. Lushington in the Consistory Court he thought that the objection that the rate was retrospective was fatal to it, and he dismissed the bill. The officers appealed to the Arches Court where Dr. Lushington's judgment was reversed, and the rate declared good. Mr. Farmer appealed against this decision to the Judicial Committee of the Privy Council, who, by the 3 & 4 W. 4, c. 41, had been substituted for the Court of Delegates, against this decision.

Sir W. Fullett shewed cause against the rule.—This rule must be discharged. In the first place this Court has no right to sit as a Court of appeal upon the decisions of the Judicial Committee of the Privy Council, even supposing that body to be for this purpose an Ecclesiastical Court.^a [Lord Denman, C. J.—

It is not pretended that we can sit as a Court of Appeal, properly speaking.] Nor can this Court question the decision of the Ecclesiastical Judge, as a Court of Appeal may do. [Lord Denman, C. J.—But may not matters arise where we may be bound to refuse to allow the process of the Ecclesiastical Court to be executed?] They may, as in the cases of the examination of witnesses; but in the present case these matters have not arisen. There is nothing for this Court to give its judgment upon. [Lord Denman, C. J.—We have been much struck with the argument against a party coming here for our opinion, when the Court has done nothing on which we can act.] The Ecclesiastical Courts are not inferior Courts, *Ricketts v. Budenham*,^b but Superior Courts, and therefore this Court will not interfere with them unless they have wrongly decided. Here there has been no decision, and this Court will not presume that when it is made it will be erroneous.

Mr. Cresswell, in support of the rule.—The party applying here has a right to assume that the rate is bad,—that it is bad on the face of it. Then there is no difficulty in finding authorities to shew that where that is the case, and it appears to be so on the pleadings in the Ecclesiastical Court, this Court will interpose, and prevent the enforcement of the rate. Mr. Farmer has not, by his appeal, estopped himself from coming here; *Narby v. Cousins*,^c for if this Court was not sitting at the time, he might have no means to prevent the execution of the sentence of the Ecclesiastical Court, but by appealing. Then as to his ground of applying to this Court: *Byerly v. Windus*,^d shews that where a matter which rests upon legal prescription is to be tried in the Ecclesiastical Court, this Court will grant a prohibition, for prescription is not properly matter for the Ecclesiastical jurisdiction. [Mr. Justice Coleridge.—Then do you contend that the question, good or bad church-rate, is out of their jurisdiction?] No; but where the only question, as here, is matter of law, which can only be rightly decided in one way, this Court will interpose. [Mr. Justice Littledale.—But the Judicial Committee has done nothing in this matter.] Yes; by entertaining the question of appeal, the subject is brought within the right of this Court to interfere.

Lord Denman, C. J.—It seems to me that the objection to this application is one which must prevail. A suit was instituted in the Ecclesiastical Court, and has been removed into the Judicial Committee of the Privy Council by appeal. Assuming that that Committee is an Ecclesiastical Court of Appeal, and that it has cognisance of causes like the present, what is the consequence? Why we must presume that it will decide according to

Littledale expressed a doubt as to the power of this Court to prohibit the Judicial Committee.

^b 4 Ad. & Ell. ; 1 Harr. & Woll. 753.

^c 1 Term. Rep. 552.

^d 5 Barn. & Cres. 1.

^a In *Hambley v. Cressly*, argued, but not decided, January 30th, 1837, Mr. Justice

law. *Bye ley v. Hindus* seems to me a case very different from the present. That was a matter which the Ecclesiastical Court had not power to try. But here the matter is one over which the Court had jurisdiction,—which it had a right to try; and we cannot say that in trying it the Court would necessarily commit an error. If the Committee should proceed erroneously, then, undoubtedly, this Court may be applied to for a prohibition to correct the error; but it cannot presume a necessity for such interference.

Mr. Justice *Littlehale*.—There is no doubt that a church rate may be inquired of by the Ecclesiastical Court, and the party having in this instance acquiesced in the inquiry, and having now appealed to the Privy Council, has thereby admitted that, *prima facie*, the Ecclesiastical Court has cognisance over the subject-matter. We cannot presume that it will decide wrongly.

Mr. Justice *Williams*.—I am entirely of the same opinion. The Judicial Committee of the Privy Council is the substitute for the Court of Delegates, and therefore the question properly came before the Committee. Nothing erroneous has been done now, and we cannot suppose that error will be committed. It would be contrary to the usual practice of all Courts to make such a presumption. If the decision should be erroneous in point of law, this Court might interfere, but we cannot presume that it will be so.

Mr. Justice *Coleridge*.—I am of the same opinion. If Mr. Creswell's argument is to prevail, we must be prepared to take away all litigated jurisdiction from the Ecclesiastical Courts. There must always be a right and a wrong side of every question, and we should then be obliged, whenever any party shewed us that he had the right side, to interfere, on the presumption that the Ecclesiastical Court would decide against the right. We cannot pretend to say now that anything of common law jurisdiction has arisen before the Ecclesiastical Court. What, then, merely because it is said here that the side applied against is wrong, must we declare that the Ecclesiastical Court cannot be trusted to decide the matter?

Rule discharged, but without costs.—*Ex parte Farmer*, H. T. 1838. Q. B. F. J.

Queen's Bench Practice Court.

JUDGMENT AS IN CASE OF A NONSUIT.

Issue being joined in July, 1837, it is too early to move for judgment as in case of a nonsuit in Hilary Term, 1838.

Samuel Hughes moved for judgment as in case of a nonsuit. Several doubts had been raised by the later cases as to the time within which an application could be successfully made for judgment as in case of a nonsuit. In the present case issue had been joined in the month of July last (1837). The question, therefore, was whether the application was too early.

Patterson, J., (after consulting Master *Burns*).—I think you are too early. You must wait until the next term.

Rule refused.—*Tabram v. Groom*, H. T. 1838.—Q. B. P. C.

SUBPENA.—WITNESS.—CONTEMPT.

Where a witness is subpoenaed to give evidence on a trial, and the attorney for the party subpoenaing him gives him leave to be absent until a particular hour, and before that time the cause is called on, in the absence of the witness, a motion for an attachment for disobedience to the subpoena will be unsuccessful.

Dowling in this case obtained a rule nisi for an attachment against a person, who had been subpoenaed as a witness in this cause, but who had not duly obeyed the writ, when the trial came on. The affidavit on which the application was founded contained the usual allegations, that the witness was material; that he had been duly served; that he had been called regularly at the trial on his subpoena; and that he had not appeared in obedience to the writ.

Chandler afterwards shewed cause on an affidavit, which stated, that the plaintiff's attorney, who had subpoenaed the witness, did on the night previous to the trial inform him, that he need not be in Court until twelve o'clock on the following day; that on the following day, he had come to the Court at the appointed time, when he discovered that the cause had been called on, and tried before his arrival. This, it was submitted, sufficiently answered the rule for the attachment.

Dowling, in support of the rule, submitted, that as the proceeding by attachment was founded on a contempt to the Court, at which the witness ought to have attended, the answer disclosed by the affidavit on the other side was not sufficient to purge the contempt.

Coleridge, J.—I think the supposed contempt is sufficiently explained. The present rule must, therefore, be discharged, and with costs.

Rule discharged, with costs.—*The Queen v. Farr*, H. T. 1838. Q. B. P. C.

CHANGE OF NAME.—ATTORNEY.—ROLL.

Where an attorney's name has been entered on the roll, and he afterwards assumed a new surname, the Court will allow the latter name to be added to the one already on the roll.

In this case a Mr. Titus Hibbert had been admitted as an attorney of this Court, and his name, both christian and surname, had been entered on the roll. For private reasons, he had subsequently assumed the name of Ware.

Walker now moved for leave to alter the entry on the roll, by adding the newly assumed name.

Patterson, J.—That may be done.

Application granted.—*Ex parte Ware*, H. T. 1838. Q. B. P. C.

TAXATION.—TREBLE COSTS.—SUGGESTION.

Where it does not appear by the pleadings that a defendant is in such a position as to entitle him to treble costs under the Highway Act, the proper course is to make the claim for such costs on taxation, and not to apply at once to enter a suggestion.

Wightman moved for leave to enter a suggestion on the record, in order to give the defendants treble costs under the Highway Act. It was an action of trespass brought against the present defendants and a great number of others, for an alleged injury done to the property of the plaintiff. The first plea, which was pleaded jointly by all the defendants, was that of "not guilty." A variety of other pleas was also put on the record. At the trial, the plaintiff failed in proving his case against the defendants, on whose behalf the present application was made. A verdict accordingly passed in their favour on the first issue. Under the Highway Act, as the defendants in question were surveyors, they were entitled to treble costs. No taxation had as yet taken place. The question therefore was, whether a suggestion ought to be entered, in order to entitle them to the treble costs, as it did not appear, on the pleadings, that such defendants were surveyors.

Patteson, J.—There is a case of *Debney v. Corbett*, in 5 Dowl. Reports, where it appears no suggestion under similar circumstances was entered, but the right of the defendant to obtain such costs was discussed on considering the Master's taxation of costs.

Wightman suggested, that as no taxation had at present taken place, no claim had consequently been made in respect of the treble costs, it would perhaps be the proper course, to make the claim before the Master, and it should be resisted or yielded to, or as the Master should disallow or allow such costs, an application might be made in respect of his taxation.

Patteson, J., was of opinion, that that would be the better course, and therefore at present, the application would be refused.

Rule refused—*Wimburne v. Giles and others*, H. T. 1838. Q. B. P. C.

VARIANCE.—DECLARATION.

A declaration in debt is irregular, after process in assumpsit.

Barstow moved for a rule to shew cause why the declaration in this case should not be set aside, on the ground of irregularity. The irregularity complained of was, that although the process was in assumpsit, the declaration was in debt. A variety of cases analogous to the present had decided, that such a variance was fatal. Thus it had been held, that where the process was in case, and the declaration in assumpsit, the declaration was irregular; although assumpsit was a species of action on the case. It was submitted, therefore, that by analogy, the variance in the present case avoided the declaration.

Culeridge, J.—You may take a rule.

Rule granted.—*Grant v. Sowter*, H. T. 1838. Q. B. P. C.

HABEAS CORPUS.—PARENT AND CHILD.—FELONY.

If a father has been convicted of felony, the court will, at the instance of the mother, grant a writ of habeas corpus to bring up the body of an infant daughter from the custody of the aunt of the latter.

In this case a man named *Bailey* had been convicted of stealing in a dwelling house; and received sentence of transportation for seven years, and was now, in furtherance of his sentence, on board the hulks. He had a daughter who was fifteen years of age. She was in the custody of her aunt, and it being considered by her mother, that that custody was not proper, an application was made by

J. Bailey, at the instance of the latter, for a writ of *habeas corpus*, to be directed to the aunt, requiring her to bring the body of the infant into court. It was submitted, that as the father was dead in law, in consequence of the conviction of felony, there was no objection to the application being made for the writ of *habeas corpus* at the instance of the mother.

Patteson, J., directed the writ to go.

Ex parte Bailey, H. T. 1838. Q. B. P. C.

Common Pleas.

PLEA IN ABATEMENT.

Where in an action for work and labour done in making a drain, the defendant means to set up that a club of which he was a member, was liable to the plaintiff, he should plead in abatement to the action, and otherwise, although it is shewn that the plaintiff is aware of the liability of the club, a rule for a new trial will not be granted.

R. V. Richards moved for a rule to shew cause why there should not be a new trial in this cause, which had been tried on the 9th December, before the undersheriff of the county of Worcester. The plaintiff, it appeared, was a labourer, and it was alleged by him that he had been employed by the defendant in making a drain, the charge for which was to amount to 10*l.* 12*s.* 6*d.* The defendant, however, in his answer to the action, alleged that the plaintiff had in point of fact been employed by a building club, of which, he (defendant) was a member, to which credit was given, and from which the plaintiff had already received 5*l.* in part payment of his demand. The jury, however, found for the plaintiff, with 5*l.* 12*s.* 6*d.* damages. The club was one of a nature very common in some parts of the county of Worcester; and the objects of the subscribers were to build cottages, &c. which were afterwards let out either to the subscribers, or to other tenants. The declaration in the present case was for work and labour; and the only plea which the defendant had put on the record, was that of the general issue. At the trial the plaintiff had proved that he had received the order to do the work from the defendant; and that on his saying that he was

unwilling to trust to the club for payment, the latter declared that he might look to him, and that he would see him paid. For the defendant, however, evidence was adduced to shew that the drain was made for the club, and that payment of the bill was originally demanded of the treasurer; but that he, having considered the charge excessive, refused to pay more than 5*l.*, whereupon the present action was brought. The bill, it appeared, was made out and addressed to the club; and it was also further shewn that the defendant, in giving the order, was acting on an authority which he had received. Since the trial, a paper in the hand writing of the plaintiff had been found, in which the work was spoken of as having been done for the club. It was submitted, therefore, that upon these facts it was evident that the plaintiff was aware that the contract was made on behalf of the club, and not on the defendant's own account; and that a rule for a new trial should be granted.

Tindal, C. J., inquired whether there was any other plea besides that of the general issue on the record.

R. V. Richards answered in the negative.

Tindal, C. J.—If the defendant had intended to insist that there were other parties liable, he should have put a plea in abatement on the record. I think as he has not done so, we cannot grant this rule.

Rule refused.—*Walton v. Grainger*, H. T. 1838.—C. P.

COURT OF REQUESTS.—COSTS.

*The Court, in granting a rule to set aside proceedings in an action on the ground that the verdict being for 10*s.* only, the defendant was liable under the 6 & 7 W. 4, c. 137, s. 86, to be summoned to the Westminster Court of Requests, will not make the rule for paying the defendant the costs incurred by him in the cause, costs not being given by the Act.*

Fish moved for a rule to shew cause why all proceedings in this action should not be set aside, and why the plaintiff should not pay the defendant the costs which he had incurred in this action, and the costs of the present application. The motion was founded on the statute 6 & 7 W. 4, c. 137, s. 86, (the Westminster Court of Requests Act), by which persons resident within the City of Westminster were relieved from any liability to be sued in the Superior Courts for debts not exceeding 40*s.* in amount. In the present case the action, which was for work and labour, was brought to recover 4*l.* 16*s.*, and the defendant pleaded as to 1*l.* 1*s.* payment, and as to the remainder that the work was not done, and the Jury found for the plaintiff, with 10*s.* damages.

Tindal, C. J.—The general rule is that costs follow damages, and as this statute does not give you costs your application in its present form cannot be granted.

Fish urged that at all events he was entitled to a rule for setting aside the proceedings, and for the costs of this application.

Tindal, C. J.—You should have pleaded to the jurisdiction.

Fish contended that he was not at liberty to do so under the circumstances of this case, but submitted that the question did not at present arise.

Tindal, C. J.—You may take a rule *nisi* for setting aside the proceedings, and for the costs of this application.

Rule accordingly.—*White v. Seftor*, H. T. 1838. C. P.

CHANCERY SITTINGS, After Hilary Term, 1838.

Lord Chancellor.

AT LINCOLN'S INN.

Thursday	Feb. 8	The First Seal.—Appeal Motions and Appeals.
Friday	.. 9	
Saturday	.. 10	Appeals and Causes.
Monday	.. 12	
Tuesday	.. 13	
Wednesday	.. 14	
Thursday	.. 15	
Friday	.. 16	
Saturday	.. 17	
Monday	.. 19	
Tuesday	.. 20	
Wednesday	.. 21	
Thursday	.. 22	The Second Seal.—Appeal Motions and Appeals.
Friday	.. 23	
Saturday	.. 24	Appeals and Causes.
Monday	.. 26	
Tuesday	.. 27	
Wednesday	.. 28	
Thursday	March 1	
Friday	.. 2	
Saturday	.. 3	
Monday	.. 5	
Tuesday	.. 6	
Wednesday	.. 7	
Thursday	.. 8	The Third Seal.—Appeal Motions and Appeals.
Friday	.. 9	
Saturday	.. 10	Appeals and Causes.
Monday	.. 12	
Tuesday	.. 13	
Wednesday	.. 14	
Thursday	.. 15	
Friday	.. 16	
Saturday	.. 17	
Monday	.. 19	
Tuesday	.. 20	
Wednesday	.. 21	
Thursday	.. 22	The Fourth Seal.—Appeal Motions and Appeals.
Friday	.. 23	
Saturday	.. 24	Petitions.
Monday	.. 26	
Tuesday	.. 27	

The Sittings will close on the 6th of April.

Such days as his Lordship is occupied in the House of Lords excepted.

Vice Chancellor.

AT LINCOLN'S INN.

Thursday	Feb. 8	First Seal.—Motions.
Friday	.. 9	
Saturday	.. 10	
Monday	.. 12	
Tuesday	.. 13	
Wednesday	.. 14	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	.. 15	
Friday	.. 16	
Saturday	.. 17	
Monday	.. 19	
Tuesday	.. 20	
Wednesday	.. 21	
Thursday	.. 22	Petition-day.
Friday	.. 23	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 24	The Second Seal.—Motions.
Monday	.. 26	
Tuesday	.. 27	
Wednesday	.. 28	
Thursday	March 1	
Friday	.. 2	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 3	
Monday	.. 5	
Tuesday	.. 6	
Wednesday	.. 7	
Thursday	.. 8	
Friday	.. 9	
Saturday	.. 10	The Third Seal.—Motions.
Monday	.. 12	
Tuesday	.. 13	
Wednesday	.. 14	
Thursday	.. 15	
Friday	.. 16	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 17	
Monday	.. 19	
Tuesday	.. 20	
Wednesday	.. 21	
Thursday	.. 22	
Friday	.. 23	
Saturday	.. 24	
Monday	.. 26	The Fourth Seal.—Motions.
Tuesday	.. 27	Petitions.

The Sittings will close on the 6th of April.

On every Friday the Vice Chancellor will hear short Causes and unopposed Petitions, previous to the General Paper.

The Vice Chancellor will sit at Lincoln's Inn Hall to hear Motions and Special Appointments, from the End of Term until the First Seal.

Rolls.

Thursday	..Feb. 8	Motions.
Friday	.. 9	
Saturday	.. 10	
Monday	.. 12	
Tuesday	.. 13	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday	.. 14	
Thursday	.. 15	
Friday	.. 16	
Saturday	.. 17	

Monday	.. 19	
Tuesday	.. 20	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday	.. 21	
Thursday	.. 22	
Friday	.. 23	
Saturday	.. 24	Motions.
Monday	.. 26	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	.. 27	
Wednesday	.. 28	
Thursday	..Mar. 1	Petitions in General Paper.
Friday	.. 2	
Saturday	.. 3	
Monday	.. 5	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	.. 6	
Wednesday	.. 7	
Thursday	.. 8	
Friday	.. 9	
Saturday	.. 10	Motions.
Monday	.. 12	
Tuesday	.. 13	
Wednesday	.. 14	
Thursday	.. 15	
Friday	.. 16	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	.. 17	
Monday	.. 19	
Tuesday	.. 20	
Wednesday	.. 21	
Thursday	.. 22	
Friday	.. 23	
Saturday	.. 24	
Monday	.. 26	Motions.
Tuesday	.. 27	Petitions in General Paper.

Unopposed Petitions and Short and Consent Causes, every Tuesday, at the Sitting of the Court.

THE EDITOR'S LETTER BOX.

A correspondent inquires "whether it is necessary, since the passing of the late act, 1 Vict. c. 56, for a person who has been admitted an attorney in one of the Superior Courts, and a solicitor in Chancery, to be admitted in the Court of Bankruptcy previously to practising in such Court." We think it is necessary. The Court of Bankruptcy cannot, we think, be included in the terms of the 4th section of the 1 Vict. c. 56. If it were so, then it would follow that an admission in bankruptcy would entitle the person admitted to practise in the Superior Courts of Common Law; and this, we presume, can never be contended. The statutes recited in the previous sections, relate to the Common Law and Equity Courts only.

The Letters of "A Constant Reader," "Junius," "J. C.," "A. W. G.," "Vigil," "E.," "Embryo," "A Subscriber," "C. B.," and "A Common Law Practitioner," are under consideration.

We have received two Letters on Legal Examination Distinctions, one or both of which shall be inserted in our next number.

The Candidates at the next Examination will be required to answer in *three* or more of the *five* classes of questions,—*Common Law* and *Equity* being two thereof.

The Legal Observer.

SATURDAY, FEBRUARY 10, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE ENFRANCHISEMENT OF COPYHOLDS.

THE Attorney General has brought in (among others,) a bill to facilitate the Enfranchisement of Copyholds, which is founded on the recommendations of the Real Property Commissioners. There are many hardships attending the present state of the law as to this species of tenure. Blackstone has said, that "we may now look upon a copyholder of inheritance with a fine certain to be little inferior to an absolute freeholder in point of interest." But this is overstated, and not written with a full knowledge of the real state of the case. A copyholder, as our readers are well aware, is not entitled, either to timber on the land, or the mines or minerals under the land. This applies to all copyholds, but when the fine on descents or alienation is uncertain, the grievance is much greater. In such cases, it is estimated by the value of the property, and in this way operates as a direct hindrance to improvement. Thus, supposing that the copyholder wishes to pull down old and useless houses on his land, and to build others capable of yielding an ample return for the capital employed, he is prevented from doing so by the fine which he or his representatives would have to pay for the projected improvement of the property; nay, it may be, that the tenant would incur a total forfeiture of the land. Again, the tenant may wish to enfranchise a part only of his land, but the lord of the manor may refuse his consent to this, and may insist on enfranchising the whole or none. It is also to be observed, that the benefit accruing to the lord from his rights, bears no proportion to the injury inflicted on the tenant. The doubtful state of the rights of both parties merely tends to check improvement.

The tenant, however, may be seriously aggrieved, especially the small tenant. He is more or less in the power of the steward, who may use it oppressively. He can only demise for one year; he is subject in all his dealings with his own land to the control of another; he is liable to forfeiture on very slight grounds, and is in many other points in a much worse situation than a freeholder.

The great question which arises under these circumstances is, whether the enfranchisement should be compulsory or not, and the question has been repeatedly discussed in this work.^b The Real Property Commissioners are opposed to compulsory enfranchisement, but many competent persons entertain a contrary opinion. We are inclined to think that the tenant should have the power of compelling the lord to enfranchise, but that the power should not be reciprocal. The lord would always have ample compensation, and the difficulties and expense of ascertaining the amount need not be encountered by the tenant, unless it suited his purpose.

We shall, however, postpone any further remarks until we are in possession of the bills which have been introduced. They are,—a bill to facilitate the enfranchisement of lands of copyhold and customary tenure; a bill for the amendment of the law relating to lands held by copy or court roll; a bill to authorise the identifying or ascertaining the boundaries of manors and lands, where such boundaries are confused or unknown; a bill to amend the law of escheat, and a bill for abolishing customs affecting lands in certain cases. They are in substance the same as those heretofore introduced, and will be referred to a Select Committee.

DRAMATIC COPYRIGHT.

WE have in our sixth volume, p. 211, given the act relating to Dramatic Literary Property, 3 & 4 W. 4, c. 15; and we took occasion to state the law on the subject. By that act (s. 1), the author of any dramatic piece shall have, as his property, the sole liberty of representing it, or causing it to be represented, at any place of dramatic entertainment; and, by s. 2, if any person shall represent, without the consent in writing of the author, at any place of dramatic entertainment, any such production as aforesaid, or any part thereof, every such offender shall be liable to the payment of an amount not less than 40s., &c. The following case has occurred under this act. The plaintiff had drawn up the libretto, or English words for the music of Weber's opera of Oberon, or the Enchanted Horn. In this shape the opera was performed at Covent Garden theatre, where the defendant sustained the principal character. The defendant afterwards caused another libretto to be written by another artist for the same music, and then performed the opera, with the new words and a new title, at his own theatre, where he again sustained the principal character. The new words were distributed among the performers for the purpose of being learnt, and were sold in the defendant's theatre; but the defendant himself still made use of the plaintiff's words, as the vehicle for two or three of the most striking airs, and, in particular, for one commencing with the words "Ocean, thou mighty monster!" whereupon the plaintiff brought this action against him under the statute. *Tindal, C. J.*, left it to the Jury to say whether, under the foregoing circumstances, there had been a representation of a part of the plaintiff's production; and the Jury having found a verdict for the 40s. penalty, it was moved to be set aside; but the rule was refused by the Court. *Tindal, C. J.*, thought that the question now brought before the Court must in all cases be determined by a Jury. By the recent statute a party is prohibited from representing, without the consent of the author, any dramatic production, or any part thereof, at any place of dramatic entertainment. It is difficult to say what is or is not a representation of part of a dramatic production, the subject *patitur majus et minus*, and it must be left to a jury to determine the fact. In effect it was left to the jury here, and they found by their verdict that there had been a repre-

sentation of part of the plaintiff's production. The other Judges were of the same opinion. *Planché v. Braham*, 4 Bing. 17; and see 15 L. O. 125.

PRACTICAL POINTS OF GENERAL INTEREST.

COSTS OF ATTENDING REVISING BARRISTER.

The following case decides a new point:—

A rule having been obtained by *Kelly*, calling upon the Commissioners of the Court of Requests for the city of Bath to shew cause why a writ of prohibition should not issue to the said Commissioners, prohibiting them from proceeding in the above cause in the said Court of Requests. It appeared from the affidavit on which the rule was obtained, that Humby was a householder of Bath, and that his name was on the list of persons entitled to vote in the election of members of Parliament for the city of Bath; and that he had objected to the name of Roberts being retained on the same list of voters, by virtue of the 2 & 3 Will. 4, c. 45; that Roberts attended before the revising barristers at their Court, when the objection was disallowed, and his name retained on the list. The affidavit then stated, that on the 7th of October last a summons, of which the following is a copy, was left at his house in Avon Street:—"To James Humby, Avon Street, Yeoman." [After setting forth the title of the Court, it proceeded.] "You are hereby summoned personally to appear before the Commissioners of the Court, to be held on Wednesday the 11th of October instant, precisely at ten o'clock in the forenoon, in the Guildhall of the city of Bath, to answer a demand made against you by William Prowling Roberts, for the sum of 10s. for attendance on the 2d day of October instant, on your notice, at the Revising Barrister's Court, and not to depart from the said Court without leave: hereof fail not. Dated the 7th day of October, 1837." The affidavit further stated, that the matter came on for hearing at the Guildhall, on Wednesday the 18th of October, when the defendant Humby attended, and objected to the jurisdiction of the Commissioners: that, after much discussion, a majority of the Commissioners ultimately decided that they would take cognizance of the case, and adjudged in favour of the plaintiff's claim; and that on the 20th of October, the following order was delivered to Humby:—

"To James Humby, Avon Street, Yeoman.

William Prowling Roberts, plt.
Between } and
James Humby, deft.

"At the Court of Requests for the city of Bath and the liberties thereof, &c." [setting forth the title of the Court.] "held on Wednesday, the 18th day of October, 1837, in the Guildhall of the city of Bath, It was ordered that the defendant do pay to the plaintiff the

sum of ten shillings for his debt, with the further sum of three shillings and five pence for his costs adjudged to him in this cause, on or before Monday, the 20th day of November next; and upon failure of making such payment, execution will be awarded for the said debt and costs, together with further costs."

After cause had been shewn,

Lord Abinger, C. B., said this case has been very ingeniously argued, but I am of opinion that the rule for a prohibition must be made absolute. In the first place, a comparison was made between this case and the proceedings in *Ricketts v. Bonenham*, 4 A. & E. 436, in the Ecclesiastical Courts; but that case is not analogous, as there the Ecclesiastical Court not only had jurisdiction, but it was confined to their jurisdiction. It has no analogy to the case of an inferior Court. In inferior Courts a jurisdiction must be shewn, it will not be presumed: 2 Bac. Abr. Courts, D. 3 & 4. Here, upon the face of the proceedings, there is a want of jurisdiction. The summons states no other foundation for a claim of debt than that Roberts attended before the revising barrister, in consequence of a notice that his vote would be disputed. The attendance upon that notice does not constitute a debt. Then, does the act of parliament extend to this case? It must be construed strictly, as it gives powers to a Court of inferior jurisdiction. We cannot give to the words of the 16th section the sense contended for. I cannot pretend to say what is the meaning of the words in the latter part of the clause as to the *quantum meruit*. It is enough to say that they cannot be construed into an action of debt for attending before the revising barrister, though the parties be vexatiously taken there. Next, it is said that, by the 47th section, their jurisdiction is final, and our power of interference is taken away; but the jurisdiction of the Superior Courts cannot be taken away without express words. That section says there shall be no *certiorari*; but that does not apply to cases of prohibition, which is not to remove the cause, but to restrain the inferior Court from proceeding. It, therefore, is not necessary to decide whether an application after sentence is too late, unless a defect on the proceedings appears upon the face of the sentence, as here we are clearly of opinion that a want of jurisdiction does appear.—*Roberts v. Humby*, 3 M. & W. 120.

MEMOIR OF MICHAEL BENTLEY, Esq.

THE late Michael Bentley, Esq., one of the Benchers of the Middle Temple, was born at Bradford in Yorkshire, Feb. 18, 1756. He was the son of a solicitor in that town, of great respectability. Mr. Bentley was educated at the Grammar School at Bingley, in the same county, and was afterwards articled to his father. He spent part of

the time devoted to his legal education in the office of Messrs. Allen & Co., of Furnival's Inn, a firm in extensive business as northern agents. The practical information and technical accuracy which Mr. Bentley here acquired, afford an illustration of the advantages derived by such means to those who afterwards pursue the higher walks of the profession. In these offices, Mr. Bentley proved what excellent mental exercise can be found in those pursuits in which the inattentive or ordinary youth experiences nothing but dry detail and irksome forms. The writer of this brief Memoir has heard the subject of it declare, that at this early period he acquired the habit of mastering every document or case which came before him, however novel or repulsive it might be,—thus establishing a habit which makes subsequent knowledge much easier in its attainment, and forming a system of attention and observation which, even in little things, is invaluable.

Promising however, as were Mr. Bentley's prospects as a solicitor, he determined to fit himself for the bar, and under no trifling difficulties, he laboured with unremitting toil in the study of the law of real property, which, at that time possessed few literary aids, rendering it less distasteful to a mind fresh from classic and general literature. Mr. Bentley never enjoyed the advantage of being a pupil in the chambers of an experienced lawyer—and he has often been heard to say, that his difficulty did not exist in overcoming the reluctance so often felt in studying dry and abstruse works, but in the means of procuring them for his perusal.

Mr. Bentley was admitted of the Society of the Middle Temple on the 18th November, 1778, and after having practised for some time under the bar, he was called to it the 8th February, 1788. At a subsequent period, he became extensively employed as a conveyancer, and during a long career, he was esteemed amongst the most eminent of the profession, and rivalled by few in a deep knowledge of that department of the law, and in that caution and laborious research, superinduced by a full conviction of the high responsibility and importance attached to the duties of such practice. His profound science, admirable application of legal principles and decisions, and great skill as a draughtsman, won the confidence of his clients, while the urbanity of his manners, his amiable character, and sterling integrity, frequently converted the professional man into the constant friend. Indeed, in private life, he was beloved, and as a hus-

band and father, his character ever shone with an unpretending but steady lustre. He was called to the Bench of the Middle Temple, on the 25th May, 1827; and in the following year, the death of his wife, by which he was deeply afflicted, induced him soon after to quit his laborious duties, and to seek for repose and tranquillity in private life. The law is an absorbing profession, and to the reflecting mind, it must be considered a happy circumstance, when its votary, after a protracted career, is permitted to rest from his toils, and to store the mind with other and higher aspirations. In his seclusion, Mr. Bentley was visited by the further affliction of losing an eldest son and an only daughter. At length in his 82d year, on the 20th December last, he died at his house in Brompton Row, leaving the remembrance of many excellent qualities as an upright man, and a learned and able lawyer.

LEGAL EDUCATION.—LAW LECTURES.

WE are anxious on all occasions, for the benefit of our younger class of readers, to collect whatever may assist them in their studies, or improve them in professional character and attainments. With this view we have not been inattentive to the Law Lectures which are in course of delivery at the public institutions in the metropolis; but have not sought to obtain any regular reports of such lectures, inasmuch as any abridgment of them for which we could afford room would not be satisfactory, either to the learned lecturers or to our readers in general. We have, however, on many occasions been enabled to give a report of such introductory lectures as appeared to us to be of general interest and importance. On this principle we gladly avail ourselves of the opportunity of stating the substance of some valuable remarks recently made by Mr. Lloyd, the Equity Lecturer at the Incorporated Law Society. They are as follows:

“One of the great objects, or indeed the main object, which must be steadily kept in view in every well-advised system of education for a profession, is that there shall be a proper combination of principles of the profession as a *science*, and a practical application of them as an *art*.

“The nature of the duties which all or the great majority of you are called upon to discharge, being connected with, and in

fact forming part of the profession of the law as an art, there is some danger lest the principles of the profession as a science should be neglected, and yourselves become merely practical men, with nothing to guide you beyond what at the best must be a limited personal experience. The few moments, therefore, which can properly be devoted to the acquisition of the learning or *doctrinal* part of your profession, are most valuable, because they tend under many circumstances of difficulty to produce that combination of the science with the art to which I have alluded.

“In this view, it is indeed something that the mind should be held in attention for a passing hour; but what (for your advantage,) I am most desirous of attaining as an end in these lectures, is, that they should become the basis of an investigation of your own into the different subjects that are dwelt or touched upon; that they should be occasions and provocations to thought and reflection on your part, rather than the mere presentations of the thoughts of another. It has been in order, in some measure, to secure this end, that I have been frequent in references to decided cases—not that I by any means think that what is called “a case lawyer,” is even practically the best; but because I deem the references to cases the readiest means to engage you in those voluntary and moderate efforts of the mind which will form the habit of reflection, without the fatigue that follows from all excessive exertion, whether of mind or body.

“I have made these few preliminary observations at the commencement of a fresh division of these lectures, in the hope that by presenting to you this important topic of advice, I might infuse a new degree of vigor into your exertions, without the use of which, nothing can be well accomplished in the arduous profession you have chosen.”

NOTICES OF NEW BOOKS.

The Law of Bills of Exchange, Promissory Notes, Checks, &c. By Cuthbert W. Johnson, Esq. of Gray's Inn, Barrister at Law. London; Richards & Co., 1837.

MR. CUTHBERT JOHNSON, the able Biographer of Coke, has turned his attention to the Law relating to Bills of Exchange,—of which he has given a very useful Digest. There are many able treatises on this subject, and perhaps little remained for illustration beyond some recent decisions, and the two acts concerning Usury on Bills of a

limited date. Mr. Johnson's book is well arranged, concise, and accurate. He commences with a history of bills of exchange, drafts, &c., and then proceeds to treat of the several branches of the law as applicable to the drawer of a bill:—the drawee and acceptor;—the indorser and indorsee. Next he enters upon actions on bills;—the evidence in such actions;—and finally, he states the several acts of parliament, from the 5 Ric. 2, st. 1, c. 11, down to 1 Vic. c. 80.

The following is the author's very pithy preface,—the promise in which has, we think, been faithfully kept :

In this work I have endeavoured to include, in as brief limits as possible, every case of importance, and principal point worthy of notice in the law of Bills of Exchange. I have paid no attention to any other objects but conciseness and usefulness ; and have spared no pains to make it accurate. With these views I submit this compendium of authorities to the profession, and beg to request for it a favourable consideration. For any criticisms, or suggestions for its improvement, I shall be grateful, and will gladly avail myself of them in any future edition to which it may have the good fortune to attain.

The following extract from Mr. Johnson's historical account of Bills of Exchange may be interesting to many of our readers :

The origin of Bills of Exchange, Drafts, &c. must in the most extended sense, have been nearly coeval with the invention, or at least with the general employment of writing ; for a written request from a creditor to a debtor to pay the bearer so many pieces of silver or gold, or even so many sheep or bullocks, which are the standard of value among many rude nations, would constitute a draft, payable at sight. And if the debtor was desired to pay the bearer at some future date, as after an approaching fixed festival, fair, or market day, that would be an order payable so many days after date.

Such simple modes of transferring personal property must have been in use from the earliest periods, when men began to dwell together under any degree of civilization, and were doubtlessly of a much earlier origin than the date commonly assigned to them.

It is generally said that the Jews of Lombardy, or other great Italian dealers in money, who in the dark ages were the almost exclusive bankers of Europe, were the inventors of Bills of Exchange ; and that necessity was also the parent of this scheme, since the difficulty and danger of transferring money to any distance in the precious metals, was in those days extremely hazardous ; more especially if the owner happened to be a Jew.

In that iron age an Israelite was supposed to have no legal title to his property, but that he came by it with the assistance of Satan, and

a poor despoiled Jew, had, in consequence, no court of justice to appeal to. His judges, who were generally monks or other ecclesiastics, considering that to take gold from a priest was the greatest of crimes, but that to rob an Israelite of his money was an action acceptable even to the Supreme Being.

Bills of Exchange, therefore, were probably very early extensively and gladly employed by those celebrated Lombard merchants, whose name is yet retained by a street in London, almost sacred to bankers and other dealers in money. A Venetian law of the 14th century expressly mentions Bills of Exchange, and according to the 4 *Moderna Universal Hist.* 499, paper money was introduced into China a century earlier. The following monkish legend, which, with all gravity, the celebrated Cardinal Baronius inserted nearly three centuries since, in his Ecclesiastical History, has been adduced as a proof that bills of exchange were employed so early as the fourth century.

The philosopher Synesius, afterwards bishop of Ptolemais, about 410, having converted a pagan philosopher, Evagrius of Cyrene, to Christianity, the convert soon afterwards brought to Synesius three hundred pieces of gold for the poor, requesting a Bill, under his hand, that Christ should repay it him in another world, with which Synesius complied ; and not long after, Evagrius being about to die, he directed this bill to be deposited in his coffin.

Soon after his death, he appeared in a vision to his friend the bishop, and told him to come to his grave and take his bill, which upon Synesius doing, he found his bill in the hand of the corpse, with this receipt written upon it :—

" I, Evagrius the Philosopher, salute the most holy bishop Synesius. I have received the debt which in this paper is written in thy own hand-writing. I am satisfied, and have no lawful claim for the gold which I gave to thee, and by thee to Christ our God and Saviour."

Good Richard Baxter, when commenting upon this marvellous story, which he evidently believed, very gravely remarks : " If any be causelessly incredulous, there are surer arguments which we have ready at hand to convince him by."—CROSS OF CHRIST. *Preface.*

The old Bills of Exchange bore little resemblance in their form to the brief yet expressive Bills and Promissory Notes of modern days. Richard Arnold, who died about the year 1521, gives in his Chronicle, fol. 106—118, edit. 1811, the following form of the promissory notes and foreign bills of exchange employed in his time.

PROMISSORY NOTE.

Md'.—That this Byll, made the VIII Day of February in the XVIII yere of the reign of Kyng E. the IIII. berith Witneass, that we, R. Shirlly of London, Grocer, and T. S. of London, Haburd'. owen unto W.W. of London, Haburd. liij. iiij. d' st. to be payd to the sayd W. or to his certain attorney att y^e Feste of Mydsomer next comynge without any delay

To the which paymet wel and truly to be made we binde us our evers and our Executours, and eche of us in the hole. In wytnesse whereof we set to our seales, the day and time before rehersed.

BILL OF EXCHANGE.

Be it known to all Me. y^t I, R. A. Citezen and Habd^r. of London. have res^s. by Exchange of N. A. Mercer of the same Cite XX. li. St.] whiche twenty Ponde St. to be payd to the sayd N. or to the Bringer of this Byll, in Synxten Marte next conyng for VI. ^{rs}. viij. d^r st]. IX. s. iiij. g. fl.] Money Currant in the sayd Marte; and yf any default of payment be at the day in alle or any part yrof, that I promyse to make good all costs and scathes that may growe thereby for defeaute of payment, and hereto I hynde me myn Executours and all my Goodis wheresoever they may be founde, in Wytnesse whereof I have written and sealded this Byll, the X Day of Marche A^o Dni. MCCCC. &c.

The first reported trials in our courts upon a Bill of Exchange, in which it was held that an assumpsit lay upon them, are those (A. D. 1602.) of *Martain v. Bourne*, Cro. Jac. 6.; and *Oaste v. Taylor*, Cro. Jac. 306.

It was with evident reluctance, however, that the courts thus authorized the transfer of the right to a chose in action (or right not in possession), they especially restrained even this authority to foreign Bills of Exchange. *Fairly v. Roch*, (1686), 1 Lutw. 891.

Guided, however, by the custom of merchants, they soon extended this doctrine to Inland Bills drawn between traders; and finally, they considered a Bill of Exchange or Promissory Note of itself evidence of trading according to the customs of merchants.—*Bromwich v. Lloyd* (1696), 2 Lutw. 582. "For, said Treby, C. J., "Bills of Exchange are for the general use and benefit."

Promissory Notes were still longer exposed to the bitter opposition of the courts; they were the last members of the family reluctantly recognised in Westminster Hall.

In *Clark v. Morton*, 2 Lord Raym. 758, (1702), the celebrated C. J. Holt was decidedly against them. He observed that "this note could not be a Bill of Exchange; that the maintaining of these actions upon such notes were innovations of the rules of the common law, and that it amounted to the setting up a new kind of specialty unknown to the common law, and invented in Lombard street, which attempted in these matters of Bills of Exchange to give laws to Westminster Hall: that the continuing to declare upon these notes, upon the custom of merchants, proceeded from obstinacy and opinionativeness, since he had always expressed his opinion against them, and since there was so easy a method, as to declare upon a general indebitatus assumpsit for money lent, &c."

In spite, however, of the opposition of the courts, promissory notes still continued to be more and more employed, until at length the act of the 3 & 4 Anne, c. 9, (1704) made per-

petual by the 7 Anne, c. 25, (1708), declared that the holder of a promissory note "shall and may maintain an action for the same, in such manner as &c. upon an inland bill of exchange."

The legislature has never since forgotten steadily to encourage the custom of merchants with regard to these negotiable securities. Thus, by the Stamp Act, the 5 Will. & Mary, c. 21, s. 5, (1694), Bills of Exchange were expressly declared to be legal without being stamped.

By 9 and 10 William 3. c. xvii. (1698), the holders of Inland bills were desired, in cases of non-payment, to protest them within three days of their becoming due, and the form of the protest is given.

By 3 and 4 of Anne, c. 9 (1704), made perpetual by the 7 Anne, c. 25 (1708), Promissory Notes were declared to be assignable in the same manner as Bills of Exchange, "to the intent to encourage trade and commerce," and directs that bills refused acceptance shall be protested, but that no protest shall be necessary, either for non-payment or non-acceptance, unless the amount shall be for 20*l*. or upwards and for "value received."

At last (1833), by the 3 & 4 W. 4, c. 68, s. 7, Bills of Exchange and Promissory Notes not having more than three months to run, were exempted from the penalties attached to usury.

Such has been the slow, though steady, progress of Bills of Exchange; a march so quiet, that it is impossible to mark the different stages of their introduction with even tolerable exactness. They are confined to no set form of words or class of persons; are unrestrained as to their duration, except by the will of the maker, and until the 22 G. 3, c. 33. (1782) did not even require the formality of a stamp.

SUGGESTED IMPROVEMENTS IN THE LAW.

JUDGE'S POWER TO STAY PROCEEDINGS ON TERMS.

Sir,

AN action, a short time ago, was brought against a client of mine, who not wishing to incur any further legal expenses, instructed me, after service of the writ of summons, to see the opposite attorney, and propose a *cognovit*, payable in the same time as if the plaintiff had gone to trial and obtained judgment; but to my very great surprise, the attorney, after consulting with his client, refused to take it, at the same time stating that his client did not want money, but he had orders not to accept of any terms, but to declare. In consequence of this treatment, or rather feeling on the part of the plaintiff, I was induced to take out a summons to stay the proceedings on payment of the debt and costs, upon the same terms as above; but the summons being opposed, the Judge stated that he had no power to make the order, and consequently the

plaintiff, out of malice, has declared; and my object in troubling you with these remarks, is to bring it before the notice of your readers, in the hope that the practice may be altered, so as to allow a Judge to use a discretionary power when an unfortunate defendant is willing to place his plaintiff in the same situation as if he proceeded to trial, and without putting him to the expense of paying to his own attorney costs which must necessarily be taken off on taxation.

A CONSTANT READER.

MAGISTRATES' CLERKS' FEES.

To the Editor of The Legal Observer.

Sir,

In the Recovery of Tenements Bill, the very liberal allowance of *one penny halfpenny* for every folio of *ninety* words of copy is proposed to be given to the justice's clerk. I am sure it is only necessary to point out this, to induce you to give the matter publicity amongst the profession, and thus perhaps to bring the matter under the notice of the Law Institution. Messrs. Aglionby and Warburton, have, I believe, the management of the bill. These honourable members ought to have known that clerks to country justices have no annual salary, as in London, but their only emolument arises from their fees, and that they are universally solicitors of high respectability and standing.

Now is it to be supposed that any respectable solicitor, and man of education and high standing, will hold any such office when this liberal fee of one penny halfpenny for every folio of ninety words copy, is to be paid him? This small scale has been adopted in two or three acts of parliament, and if it is carried to any further extent, none but pettifoggers or youngsters will be found to undertake the office of clerk to the justices; and they only from the prospect of leading the magistrates astray, and thus remunerating themselves, either in defending for the magistrates, some expensive action, or by being subpoenaed as a witness in the case. I am sure your zeal for the respectability of the profession, will induce you to give publicity to the subject.

A CLERK TO A COUNTRY BENCH OF
MAGISTRATES.

[We cannot doubt that this subject will be taken up by some of the members of the profession, who have seats in parliament; and from our estimate of the professional character of Mr. Aglionby, we think he will be ready to correct the mistake into which he appears to have fallen. ED.]

ON LEGAL EXAMINATION DISTINCTIONS.

To The Editor of The Legal Observer.

Sir,

SEEING the great interest you take in every thing that relates to the profession, of which your Journal is so able an advocate, and feeling convinced that with your usual impartiality you will not object to hear both sides of a question, I have ventured to offer a few observations on the letter of J. N., which appeared in your number of the 29th January, relative to the proposed plan of awarding prizes to those who distinguish themselves at the examinations appointed to take place previous to the admission of attorneys.

When the examinations were first instituted, there were reasons why this plan should not be at once adopted: every thing could not be accomplished at a blow; it was necessary to advance step by step; but I conceive that those reasons no longer exist; and with all due deference to the talent and ingenuity of your correspondent, unless there are other grounds than those urged by him for the rejection of the plan, few, I think, can coincide in his opinion.

After some remarks as to there being "malcontents" in the profession, "whose thirst for change and novelty are unsatiable," and saying that the "proposed change must on all hands be admitted as uncalled for"—(which, by the way, I am much inclined to doubt) he goes on—"I ask if this half-considered suggestion should be ultimately approved and incorporated with the present practice, would there be in these examinations that spirit of *fair play* which should characterize all examinations?"

The arguments put forward on this head, and which occupy too much space to transcribe, might be urged generally against the practice of giving rewards in all cases, and are quite as applicable to the system adopted at our universities and public schools, as in the case under discussion. They are, then, at once shewn to be fallacious; for who would for a moment entertain the idea of abolishing that system;—its advantages have been too great;—it has proved one of the chief means of encouraging application and study, and thus of advancing the progress of science, and to it in a great degree may be attributed the celebrity which our universities have attained. If, then, this system has answered so well in advancing the progress of general science and literature, why should it not have the same effect as regards the law? Much stress cannot be laid upon the point which your correspondent so strongly urges, that the opportunities of some candidates are better than others; for, alas! experience proves that often, very often, those who have had the greatest advantages, are least fitted for the stations they have to fill. Under all circumstances, you will generally see that justice follows the really

deserving man, and that true merit seldom loses its reward.

The second objection started is, that "though the examiners may form an opinion of the merits of each candidate, in many cases the examination must fail as a test of ability," because the excitement under which many persons labour is such as to place them on most disadvantageous grounds, and often wholly to incapacitate them at the moment they should be calm and collected." This, I allow, may sometimes happen in an oral examination, though even then not often with those who are *masters* of their subject; but it can scarcely be so in the plan of examination adopted in the present case. Confidence can accomplish a great deal; but seldom can it overcome sound knowledge. Besides, is it possible to imagine how the mere knowledge of the fact, that a reward is to be given to two or three of the most distinguished can act so powerfully as totally to incapacitate a man who, in the event of no reward being given, would have acquitted himself well? To go further, even allow that some might labour under this disadvantage, and I will put this question—was there ever any law or general rule, however good, that did not occasionally oppress individuals?

Having stated these two arguments, he winds up by saying, "Are the courts justified in allowing distinction to be awarded to the few, to the prejudice of the many?" Did this system of awarding marks of distinction tend to prejudice the many, the question could only be answered in the negative. But it will not tend to prejudice the many—as again witness the universities—yet it will, nevertheless, be of great use and benefit to the few, and why should not merit be rewarded? It is impossible for every one to be first; and we have not yet become so stultified as to think that if a man's talents and learning are not of the first order, he is therefore useless and good for nothing, for experience proves the contrary.

I think there is little doubt but that the system of awarding prizes in the case now before us will work well; for, by it an honourable spirit of emulation will be aroused, a much more powerful incentive to application and study than "the probability and dread of defeat." C.

SIR,

I entertained hopes that my last letter to you on this subject would have sufficiently silenced all further objections to the efficacy and general utility of the proposed system; but I find, in your No. of the 27th ult., that a correspondent, bearing the signature "J. N.," has, in a letter of considerable length, again dragged out the discomfited arguments of the former "Anti-Distinctionists," and, after having burnished them with all the polish of his own imagination, produces them as irrefragable proofs that the intended system will be ineffectual, and even pernicious.

I can assure your correspondent, that he misunderstands the tone of the profession, if

he thinks its members are averse to the plan; for, as far as my communication with them has gone, the general opinion has been decidedly in its favour, and many of the Examiners have likewise expressed to me their entire approbation of its adoption.

The principal propositions of your correspondent are, that "*fair play*" will not be awarded. First, because superiority of knowledge is obtained by superiority of purse;—secondly, that timidity overcomes the energy of talent at the hour of trial.

An answer to both these objections has been impliedly given by the arguments in my former letter. Both of these objections are equally applicable to every system of examination in any department of art or science. At Oxford or Cambridge, the wealthier student avails himself of the valuable services of an experienced tutor, who assists him in his studies, and directs his mind towards those points of learning which it is most necessary for him to possess, in order to gain that distinction which he seeks, whilst the poorer student must rely upon his own unaided exertions. So in the study of medicine, time and money, of course, enable their possessor to gain much assistance, which is not otherwise attainable. Yet, notwithstanding these disadvantages of education, how often do we see the poor, needy student—

"Unseen, unpitied, friendless,"

By dint of his own perseverance, and by the capabilities of his own mind, rise triumphant above the difficulties of his situation! "Difficulty," it has been truly said, "is a severe instructor;" but its very severity carries and feeds the germs of success—

"—Deus ipse colendi,
"Haud facilem esse viam voluit."

As this is undoubtedly a correct application of the reasoning of "J. L.," we are then to understand that he is averse to distinctions of any nature, and would let the good and the bad, the learned and the ignorant, be commingled in one undistinguishable throng; and, therefore, perpetrate a gross injustice towards those who have followed their studies with superior determination and decision of character. Can, then, the objection of want of "*fair play*" come with a good grace from such an opponent as this?

His other objection is answerable on the same grounds. The excitement of the hour also applies to every examination, and the student may, in Apothecaries or Surgeons' Hall, or any other place of mental torture, be equally "with his heart on the bloody verge of death," as "J. N." expresses himself. The plan which I understand is under consideration, will, I think, obviate the effect of all such objections. W. A.

SIR,

The Hilary examination having passed, and no distinction having yet been made between those candidates who distinguished themselves by the correctness of their answers and those

who did not, I take the liberty of calling the attention of the Examiners for the ensuing year to the often-discussed subject. The examinations have proved that a stimulus was all that was wanting in making articulated clerks apply themselves; and if the same had been instituted some years since, the profession would not now have been incumbered with so many specimens of ignorance and imbecility as it now presents. Even the few instances of refusal of certificates must undoubtedly have caused regret in the minds of the Examiners, equal to the pain experienced by the postponed candidates; but it must be borne in mind, that they had a duty to perform to the public, after making allowances for the unfavourable position in which the present race of articulated clerks are placed. The hope of distinction and reward works wonders in the human breast, and, as the advocates of distinctions in the examinations are increasing, I beg to suggest that, in the absence of prizes, the Examiners should, at the foot of the certificate of every talented candidate (the form of the certificate not being capable of alteration) or on a separate paper, sign at length or with their initials, a short written memorandum, purporting that he has excelled in his answers. STUDENS.

Another letter on this subject must be deferred.

PRACTICE AT THE JUDGES' CHAMBERS.

ATTENDING SUMMONSES.—COSTS.

Sir,

I beg to call your attention to a subject which appears to me to be intimately connected with the honour of our profession. I refer to the attendance of summonses. It is well known to practitioners that summonses frequently involve points of the utmost importance to a client's case, and yet, notwithstanding, clerks are frequently sent to attend them who know little or nothing either of their nature, effect, or importance. Indeed I am not surprised at the fact, that on taxation the Master generally treats the attendance of a summons before the Judge with contempt, for the reason assigned, viz. that in nine cases out of ten an incompetent person is sent. I cannot, however, but admit, that the fee allowed by the present scale of costs is not only inadequate, but contemptible, for such a professional service. But the probability is, that if the profession in all its departments became reformed—that if it became what it should be, viz. *the executive of justice*—the probability is, that, in such a case, remuneration alike adequate to mental and professional service would be awarded, not only by the officers of Court, but by the common and liberal consent of the suitors.

The object of these observations is to propose a plan for the better discharge of the

duties to which I have alluded. The plan is this: that every attorney depute some one clerk to attend all appointments in his absence or place (whether before the Judge or the Master), and to certify the competency of such clerk to the Master, whereupon his name should be registered. It appears to me that the public can only be protected by the adoption of some plan of the nature which I have hinted at. Of what use is it that the attorney himself is certificated, if he be allowed to transact the business of his client by an incompetent clerk? To remedy the evil, of which all must be convinced who are in the habit of attending the Judges' chambers, &c. I call the attention of the members of the profession to the subject. I do not ask the adoption of my plan—I have pointed out the evil, and shall be satisfied, as a member of the profession, with whatever may be calculated to remedy it.

J. C.

SUPERIOR COURTS.

Lord Chancellor's Court.

WILL.—DOWER.—ELECTION.

A devise of freehold to trustees, in trust to sell and vest the proceeds for the benefit of persons named, is inconsistent with the devisor's widow's right to dower out of that freehold, larger benefits being given to her by the will. A direction in a will to pay all the testator's just debts out of the proceeds arising from the sale of a freehold house and furniture, does not exempt the personal estate from payment of the debts.

C. Ward, by his will, dated in August 1808, devised and bequeathed his freehold messuage and dwelling house, offices and outhouses, gardens and orchard, &c. then in his own occupation, and situate in Easton Street, Chipping Wycombe, and all his furniture, plate, linen, horses, carriages, and things in and about his said dwelling house, unto his executors and trustees therein named, upon trust to sell the same, and to vest the net proceeds, after payment of all his just debts, personal and testamentary expenses, in the public funds for accumulation, until the youngest of six persons, all infants, named in the will, should attain the age of twenty-one; whereupon the accumulated fund was to be divided between the six in equal shares. The testator, by his said will, also disposed of his freehold house in Margate, and of leasehold property which he had in Queen's Elms, for the benefit of his wife; to whom, by a codicil to his will, he gave the residue of his personal estate, for her life. The testator died soon after the date of his will. The freehold estate in Chipping Wycombe, with the house, and furniture, &c., were sold at different times; and the proceeds, after payment of debts and expenses, were vested, and a third part thereof set apart to

answer the widow's dower, the interest of which was duly paid to her. The youngest of the six persons named in the will, attained twenty-one in 1825, and they, or some of them, filed this bill against the executors and trustees for an account of the proceeds of the testator's freehold estate at Chipping Wycombe, and of his other effects. The widow was a party to the suit. Upon the hearing of the cause in 1829, an order of reference was made to the master to take such accounts, and to make inquiries, and report as to the testator's debts, and the residue of the personalty, and the widow's right to dower. The master, by his report, found that the freehold house and land in Chipping Wycombe, were sold in 1810 for 919*l.* 12*s.* 6*d.*; and the net proceeds, after paying expenses, &c. amounted to 826*l.*, which was vested in the purchase of 1200*l.* consols. The furniture, plate, &c. were sold afterwards for 510*l.* 12*s.* 7*d.*, which, after payment of expenses, and of testator's debts, left a sum to be vested with the 1200*l.* in consols, producing altogether 1957*l.* in consols. The house at Margate, and the leaseholds, were also sold; and the proceeds, after payment of bequests, left a residue of 2788*l.* vested in consols. The widow received the interest of 400*l.*, one third of the net proceeds of the sale of the Chipping Wycombe freehold property, from the death of her husband down to 1825, as her dower, to which the master reported she was not entitled. The cause coming on in 1833, upon further directions, two questions were argued; first, whether the terms of the devise, after payment of all the testator's just debts, &c., made the debts a charge on the freehold property at Chipping Wycombe, in exoneration of the personal estate; secondly, whether the widow was entitled to dower out of that estate, or put to elect between it and the benefits she received under the will. The Vice Chancellor held the claim to dower excluded, as being inconsistent with the devise: and also that the personal estate was exempt from the testator's debts. His Honor's decision on both points was appealed from.

Mr. Wigram, and Mr. Cooper, for the widow.—As to the first point, admitting that the personal estate was the first fund for payment of testator's debts, and that real estate was never resorted to unless in case of a deficiency of the personal estate, or an exemption of it by express words or plain intention of testator, they submitted that there could be no doubt that the terms of the devise in this case charged the proceeds of the sale of the house and furniture, &c. at Chipping Wycombe, with all the debts; and they cited among other cases, *Hancox v. Abbey*,^a *Galton v. Hancock*,^b *Foster v. Cook*.^c The direction in the will to vest the net proceeds of the sale after payment of all just debts, &c. amounted to an express

exemption of the personalty, which was afterwards disposed of by the codicil. The second question, whether the widow was entitled to dower, *ultra* the benefits given to her by the will and codicil, was more difficult. Since the case of *Laurence v. Laurence*,^d in which Lord Keeper Wright, and Lord Chancellor Cooper, differed from the opinion of Lord Somers, the doctrine of the Courts of Law as to the wife's right to dower, has been what it was before the 27th Henry 8th, c. 10, which made a jointure a bar to dower; but it must be so declared in the will; so it is held at common law; but this Court has interposed, and in the absence of express declarations, admitted manifest intention of the testator to exclude the wife from her legal right. The distinction established by the principal cases, is, that to exclude the wife from this clear legal right, the husband's intention must be demonstrated by express words, or manifest implication; or by some provision in the will or other instrument, inconsistent with the assertion to the right to dower. *Hitchen v. Hitchen*,^e *Foster v. Cook*,^f *Lemon v. Lemon*,^g *Brown v. Parry*,^h *Lord Dorchester v. Earl of Effingham*,ⁱ *Birmingham v. Kirwan*.^j In most of these cases the wife had some provision by will out of parts of the husband's freehold estates, by rent-charge, annuity, or otherwise, and yet was held entitled to dower out of the other part of the husband's estate, and was not put to her election. There were other cases, still stronger, in favour of the wife's dower; *Pearson v. Pearson*,^k *Greatorex v. Cary*,^l and *French v. Davies*.^m The present case comes precisely within the last decision. There were four cases in which the wife was put to her election. *Arnold v. Kempstead*,ⁿ *Villurel v. Lord Galway*,^o *Jones v. Collier*,^p and *Wake v. Wake*,^q but these cases have been held not to be well decided. There was no disposition in the will of the testator in this cause inconsistent with the widow's claim to dower; and the decision of the Vice Chancellor could not be reconciled with the authorities.

The Solicitor General, Sir W. Horne, and other counsel for the other parties, confined their arguments chiefly to the question of dower, and contended that the devise of the freehold estate, to be sold out and out, was quite inconsistent with the widow's right to dower. Besides, the ample provision made for her by the will and codicil, manifested the testator's intention that she was not to have dower also. There was a clause in the will, declaring that if any persons claiming an interest under the will, should dispute it, their bequests should be forfeited. That clause

^a 11 Ves. 179.^b 2 Atk. 424.^c 3 Bro. C. C. 347.^d 2 Atk. 365.^e Prec. Chan. 133.^f 3 Bro. C. C. 347.^g 8 Vin. Abr. 366; S. C.^h 2 Equi. Cas. Abr. 355.ⁱ 2 Dick. 685.^j 1 Coop. 319.^k 2 Scho. & Lef. 444.^l 1 Bro. C. C. 291.^m 6 Ves. 615.ⁿ 2 Ves. Jun. 572.^o Amb. 466.^p Id. 682.^q Id. 730.^r 3 Bro. C. C. 255.

was clearly aimed at the widow. The Vice Chancellor was of opinion that the wife was put to her election between dower and the larger benefits given to her by the will. The doctrine established by the cases cited on the other side was not disturbed by this case; the testator's intention was too clearly manifested by the will to require a reference to cases. But there are cases enough to shew that the widow was bound to elect *Chalmers v. Sturil*,^r *Dickson v. Robinson*,^s *Miall v. Bruin*,^t *Butcher v. Kemp*,^u *Roberts v. Smith*.^v

The Lord Chancellor.—The first question is, whether the appellant, the testator's widow, is bound to elect between the provision given to her by the will, and her right to dower. The second question is, whether the proceeds of the sale of the house at Chipping Wycombe, is to bear the payment of the testator's debts in exoneration of the personalty. The appellant being tenant for life in the residue of the personalty, the fund primarily liable to the payment of debts, insists that the debts are charged on the property at Chipping Wycombe, and claims dower out of the proceeds of that estate. It was argued on the other side, that the widow by reason of the terms of the devise is precluded from asserting her right to dower out of that estate. The residue of the personalty might be ascertained and vested, and the interest paid to the widow. The executor by his answer, said that the proceeds of the sale of the house and furniture, amounting to 1407*l.* was vested, and that, with the dividends it made 1926*l.* 10*s.* in consols. The decree directed that sum, with other funds arising from the personalty, to be transferred to the name of the Accountant General, and an account to be taken of the proceeds with the accumulations of interest. And as to the parties entitled under the will, the Master was, under the decree, to state what debts were properly paid or payable out of the proceeds of the house and furniture. The decree contained a distinct declaration on the two points now raised. The Master made his report in April 1833, in pursuance of the decree. He disallowed to the widow the provision of one-third of the proceeds of the freehold estate, set apart by the executor, under the impression that she was not entitled to dower. He disallowed all payments of debts made out of that fund. The Master could not do otherwise, under the decree, than state the debts to be payable out of the general estate. He also reported as to the persons entitled to the distribution. Exceptions taken to the report were overruled. So much of the appeal as applied to these exceptions, must be dismissed with costs. The widow's petition in the Court below, was properly dismissed, as it prayed for something inconsistent with the will. The Vice Chancellor's order was right in that respect, and the

widow's appeal must be dismissed with costs; but the appeal from that part of his Honour's decree declaring the personal estate exempt from payment of the debts, must be reversed.

Parker v. Downing, at Westminster, January 20th, and November 18th, 1837.

Queen's Bench.

[Before the Four Judges.]

LIBEL.

If a person stands forward as a candidate to contest the representation of a borough, and by a circular letter to the electors submits himself as a fit and proper person to represent them, and asks their suffrages, he does not thereby give to any elector the right to publish to all the world facts injurious to his character.

This was an action for libel, tried before Lord Denman, C. J., at the sittings after last Michaelmas Term, when a verdict was given for the plaintiff, with 100*l.* damages.

Sir W. Fullett now moved for a rule to shew cause why that verdict should not be set aside and a new trial granted, on three several grounds. The first was, that the learned Judge before whom the cause was tried had misdirected the jury. The rule was granted on the other grounds, which therefore remain open to discussion; but on the first it was refused, the Court declaring that there had been no misdirection. To that matter the report will consequently be confined. Even upon the general issue the defendant was justified in the publication. What are the circumstances of the case? The defendant was an elector of the borough for the representation of which the plaintiff was a candidate, and the plaintiff had sent a circular to the electors submitting himself to their judgment as a fit and proper person to represent the borough in Parliament. This gave them the right to examine into his conduct, and the defendant only exercised the common right which the plaintiff, by becoming a candidate and soliciting his suffrage, gave him and every other elector. The defendant had clearly a right to publish to his fellow-electors statements relating to the conduct and character of the man who stood forward to demand their suffrages. Such a publication is necessarily privileged. [Lord Denman, C. J.—In what manner is the publication to the electors to be made under this supposed privilege?] It may be made as this was made, in the newspapers. [Mr. Justice Coleridge.—Then you must contend for the right of publication to all the world; for how do you limit it when made in this manner? Can the privilege extend so far as that?] The doctrine may fairly be carried to that length. It is clear that the publication may be made to the electors. Then comes the question how it is to be made. Is it to be made at the hustings? If so, is not that a publication to all the world; and does it make any difference whether the publication is made in the shape of a speech to

^r 2 Ves. & B. 222.

^s 1 Jac. 503.

^t 4 Madd. 119.

^u 5 Madd. 61.

^v 1 Sim. & Stu. 513.

the electors, which is heard by all present, whether electors or not, and then printed in the newspapers, and so read by all, whether electors or not, or whether it is at once printed in the newspapers to be read by all the electors? It does not seem a sound distinction, to take that the mere mode of making the publication can possibly occasion any difference in the matter. If the party is justified in making the communication, he is not rendered less justifiable because he adopts one mode of making it in preference to another. The right of publication to the electors being admitted, that publication may take place in that mode which is most convenient for all parties. The only restriction on this right of publication is, that it shall be done *bond fide*, and in the honest belief that the thing stated is true. An elector in any borough has a right to communicate to the constituency of that borough any fact which he honestly believes to be true respecting the character of the candidate who seeks for their suffrages. The defendant here has shewn that he believed what he stated to be true. Such a statement might have been made in a letter to each individual elector. Then why not to all the electors at once through the medium of a newspaper? This publication may be defended on the ground that it was privileged, as being made by a person who had a right to make it, and also because at the time it was made the name of the person on whose authority the supposed slanderous statement was made was distinctly put forward. The defendant did not first make his statement and then offer to give proof of it; but, in the first instance, declared the names of the persons or publications on whose authority he relied. The cases shew that such a publication is justifiable, if made, as it was here, in the *bond fide* belief that it was true, and made on a proper occasion. *Tugood v. Spring*.^a The learned Judge was not required to direct the jury that this was a privileged communication; but it was clearly a question for the jury, whether the communication had not been fairly made, and under circumstances which would give it the character of being privileged. The case already cited clearly lays down the doctrine, that the circumstance of the communication being made in the presence of a third person, does not of itself make it unauthorised, and that it is a question to be left to the jury to determine from the circumstances whether the party making it acted *bond fide*, or was actuated by malicious motives. There are cases to shew that, where a party *bond fide* seeks to obtain a private benefit, he may justify publishing to the world matters unfavourable to others. *Delany v. Jones*,^a *Stockley v. Clement*.^b A man who stands in a public situation like this plaintiff, subjects himself to public criticism, which may fairly be directed against him. It is for the public benefit, that it should be so. In

Onslow v. Horne,^c it was held, that charging a member of parliament with want of sincerity, was no ground for an action for words. The occasion when the letters which form the subject of this action were published, was one of all others that would justify the publication. The plaintiff stood forward as a candidate, soliciting the suffrages and challenging the opinions of the electors. Any elector had a right, if he did it *bond fide*, freely to state those circumstances which he believed to be true, and fully to comment on those circumstances, as they affected the character of the candidate.

Lord Denman.—The Court is of opinion that the rule must be granted on the other question now submitted. But, on the question of the right of the defendant to make the publication, the Court does not think that there ought to be any rule; for, however large the privilege of electors may be, it would be extravagant to suppose that they could justify the publication to all the world of facts injurious to the character of any person who happened to stand in the situation of a candidate.

Rule accordingly refused on this point.—*Duncombe, Esq. M.P., v. Daniel, Esq., H. T., 1838. Q. B. F. J.*

Queen's Bench Practice Court.

ARBITRATION.—UMPIRE BY LOT.

Where arbitrators are appointed with power to choose an umpire, and they select him by lot, an award made by such umpire is bad.

In this case *W. H. Watson* obtained a rule nisi to set aside an award, on several grounds. Among them, was the ground that the arbitrators, who were appointed with power to choose an umpire, had selected him by lot. The award had been made by the umpire, conjointly with the arbitrators, and was consequently, it was submitted, void.

Smirke appeared to shew cause, and admitted that the objection taken was fatal, although the other grounds could not have been sustained. The present rule must therefore be made absolute.

Coleridge, J., directed the rule for setting aside the award to be made absolute.

Rule absolute.—*Hawkins v. Dixon, H. T. 1838. Q. B. P. C.*

Common Pleas.

EXAMINING WITNESS ON INTERROGATORIES.

The fact of a plaintiff not having proceeded promptly in an action, is no ground for refusing to allow a witness to be examined on interrogatories.

J. Bayley shewed cause against a rule obtained by *V. Lee*, for examining a person who was sworn to be a material and necessary witness for the plaintiff in the cause, and who was on the point of quitting England, on interrogatories before the master. The action was

^a 1 Cr. Mee. & Ros. 181; 4 Tyr. 582.

^b 4 Esp. 191.

^c 4 Bing. 162.

commenced in April, 1836, and the defendant pleaded in the following May. The plaintiff had then taken no proceedings until the 1st November last, when he gave notice that he should go on with the action after the end of that term. No proceedings, however, were taken until the present month of January, when a summons was taken out at Chambers before Park, J., with the same object as the present rule. It was submitted that the plaintiff ought to have proceeded promptly in the action, to entitle him to have this rule absolute.

Tindal, C. J., was of opinion that the objection was not sufficient ground for discharging the rule.

Rule absolute.—*Weekes v. Pall*, H. T. 1838. C. P.

ATTORNEY TAKING FRESH NAME.

Where an attorney has taken a name in addition to the names by which he before went, the Court will not order it to be placed on the roll.

Tully moved for a rule directing the master of this Court to add the name of Ware, to the other names of the applicant, who was an attorney of this Court, on the Roll. The affidavit alleged that the applicant had added the name of Ware to his other names.

Tindal, C. J.—He may take out his next certificate in the name of Ware, if he pleases; but I see no reason for our granting this rule.

Tully.—The application has been successfully made in the other Courts.

Tindal, C. J.—Why are we to have his new name put on the record? It may be a means of irregularly acquiring the name.

Tully.—The applicant swears that he has already acquired it by regular license.

Tindal, C. J.—He will not get into any mischief by it, and it is a mere matter of fancy.

Boanquet, J.—He has not abandoned his own name, but has only added another to it.

Rule refused.—*Ex parte Ware*, H. T. 1838. —C. P.

IRREGULAR ARREST.

Where a defendant has been arrested on an irregular writ, and a detainer has been lodged against him by another party, not being aware of the irregularity in the first arrest, he will not be entitled to his discharge out of custody.

Godson moved for the discharge of the defendant out of custody in this action, on the ground of the writ of *ca. sa.*, on which he was originally arrested, having been set aside in the Court of Exchequer, for irregularity. The defendant having been arrested on the *ca. sa.*, a detainer was lodged against him by the present plaintiff.

Tindal, C. J.—I think your application is answered by *Barratt v. Price*, 1 D. P. C. 725.

Boanquet, J.—The distinction is, that if the sheriff is a party to the illegality of the arrest, the objection will prevail.

Godson.—The sheriff is here the plaintiff.

Tindal, C. J.—But if the defendant is detained by another party innocently, the irregularity of the original writ will not entitle him to his discharge. I think that is the distinction to be drawn in the cases.

Rule refused.—*Ex parte Cogg*, H. T. 1838. C. P.

EXCHEQUER OF PLEAS.

INDORSEMENT ON WRIT.—COSTS.

When a plaintiff indorses his writ for 18l. 19s. 6d., but declares for that amount, and in addition for a further sum of 1l. 0s. 6d., and the defendant pleads non-assumpsit to the first sum, and pays the latter into Court, and the plaintiff replies, accepting the money in full satisfaction, the defendant residing within the jurisdiction of a local Court for the recovery of debts under 40s., the Court will not allow the plaintiff his costs, on the ground of his having misled the defendant by the indorsement.

The plaintiff in this cause was an apothecary, and he attended the daughter of the defendant, who was an adult, and was not living in her father's house, and also the servant of the defendant. The bill for attendance on the daughter amounted to 18l. 19s. 6d., and that for attendance on the servant to 1l. 0s. 6d., and the defendant admitted his liability to the latter demand, but refused to pay any part of the former sum. A writ was issued on the 15th October, 1836, by the plaintiff, indorsed for 18l. 19s. 6d., and on the 25th November following a declaration was delivered, together with particulars of demand, in which both sums were claimed. The defendant pleaded *non-assumpsit*, except as to 1l. 0s. 6d., and paid that amount into Court. The plaintiff replied, accepting the money in full satisfaction. The defendant resided within the limits of a County Court, whose jurisdiction extended to debts amounting to 40s., and a rule had in consequence been obtained by

Wightman, calling on the plaintiff to shew cause why the Master should not disallow him the costs of the action, and why he should not pay the defendant's costs, or why the proceedings should not be set aside, and why the plaintiff should not pay the costs of this application. It was contended that the two sums having been kept separate, and the plaintiff having by his writ demanded only 18l. 19s. 6d., the defendant had a right to suppose that it was for the disputed account only that the action was brought, and the plaintiff had no right to render the defendant liable to costs, by inserting the 1l. 0s. 6d. in the particulars. If the 1l. 0s. 6d. had been included in the amount claimed by the writ, the defendant might have taken out a summons for the stay of proceedings on that sum being paid, but by that not being done, the defendant had been misled, and a species of fraud had been practised upon him.

R. Alexander shewed cause, and produced an affidavit in which the plaintiff swore that he considered the defendant liable for both debts,

and it was submitted that as the 17. Oc. 6d. was not tendered before action brought, but was paid into Court generally, the plaintiff was clearly entitled to his costs of the action.

The Court remarked that the plaintiff had taken out of Court a sum which was not claimed by the writ, and without giving any reason for his doing so, and he now abandoned entirely his claim with the amount of which the writ was indorsed. He induced the defendant to suppose, by indorsing his writ for 12*l.* 19*s.* 6*d.* only, that that was the full amount which he intended to claim, and he thereby precluded him from taking out a summons to stay proceedings on payment of that sum, without costs, which he would have been entitled to do, the amount being less than 40*s.* The rule for disallowing the plaintiff his costs must be absolute, but the defendant had not put himself in a situation to call upon the Court to grant the other part of his rule.

Rule absolute accordingly.—*Thompson v. Gill*, H. T. 1838. *Eschequer.*

Eschequer Equity Sittings.

After Hilary Term, 1838.

Wednesday, Feb. 7	Petitions and Motions.
Thursday .. 8	{ Further Directions, Pleas, Demurrers, and Exceptions.
Friday .. 9	{ Causes.
Monday .. 12	{ Causes.
Tuesday .. 13	{ Causes.
Wednesday .. 14	Petitions and Motions.
Thursday .. 15	Causes.

Friday .. 16	{ Further Directions, Pleas, Demurrers, and Exceptions.
Saturday .. 17	Petitions and Motions.

COMMON LAW SITTINGS,

After Hilary Term, 1838.

Queen's Bench.

London Adjournment-day—Monday, Feb. 12.

Common Pleas.

London Adjournment-day—Monday, Feb. 12.

Eschequer of Pleas.

MIDDLESEX.

Thursday, Feb. 1	Common Juries.
Friday .. 2	Revenue & Com. Juries.
Saturday .. 3	{ Common Juries.
Monday .. 5	{ Common Juries.
Tuesday .. 6	{ Common Juries.
Wednesday .. 7	{ Special & Com. Juries.
Thursday .. 8	{ Special & Com. Juries.
Friday .. 9	{ Common Juries.
Saturday .. 10	{ Common Juries.

LONDON.

Friday .. Feb. 2	{ The Court will be adjourned.
Monday .. 12	{ Adjournment Day. Common Juries.
Tuesday .. 13	{ Common Juries.
Wednesday .. 14	{ Common Juries.
Thursday .. 15	{ Common Juries.
Friday .. 16	{ Special & Com. Juries.
Saturday .. 17	{ Special & Com. Juries.
Monday .. 19	{ Common Juries.
Tuesday .. 20	{ Common Juries.
Wednesday .. 21	{ Common Juries.

CIRCUITS OF THE JUDGES.

SPRING CIRCUITS.	WESTERN.	HOMER.	MIDLAND.	NORFOLK.	OXFORD.	NORTHERN.	N. WALES.	S. WALES.
1838.	Ld. Denman. J. Bosanquet.	LCJ. Tindal. J. Vaughan.	J. Park. J. Littledale.	B. Parke. B. Bolland.	B. Alderson. B. Gurney.	J. Patterson. J. Coleridge.	J. Williams.	T. Colman.
Sat. Feb. 17	-	-	-	-	-	Appleby	-	-
Tuesday 20	-	-	-	-	-	Carlisle	-	-
Saturday 24	-	-	-	-	Reading	Newcastle	-	-
Monday 26	-	-	Northampton	-	-	[& town]	-	-
Wednesday 28	-	Hertford	-	-	Oxford	Durham	-	-
Thur. Mar. 1	Winchester	-	-	-	-	-	-	Swansea
Friday 2	-	-	Oakham	-	-	-	-	-
Saturday 3	-	-	Lincoln and	-	-	-	-	-
Monday 5	-	Chelmsford	[city]	-	-	York & city	-	-
Tuesday 6	-	-	-	Aylesbury	Worcester &	-	Welch Pool	-
Wednesday 7	New Sarum.	-	-	-	[city]	-	-	-
Thursday 8	-	-	Nottingham	-	-	-	-	Haverford-
Saturday 10	-	-	[and town]	Bedford	Stafford	-	Bala	[west & town]
Monday 12	-	Maidstone	-	-	-	-	-	Cardigan
Tuesday 13	Dorchester	-	Derby	Huntingdon	-	-	Carmarvon	-
Thursday 15	-	-	-	Cambridge	-	-	-	Carmarthen
Friday 16	-	-	-	-	-	-	-	[& borough]
Saturday 17	Exeter &	-	Leicester &	-	Shrewsbury	Lancaster	-	-
Monday 19	[city] Lewes	-	[B.]	-	-	-	-	-
Tuesday 20	-	-	-	-	-	-	Beaumaris	-
Wednesday 21	-	-	-	Bury St. Ed.	-	-	-	-
Thursday 22	-	-	Coventry	-	-	Liverpool	-	-
Friday 23	-	-	Warwick	-	Hereford	-	-	Brecon
Saturday 24	Launceston	-	-	-	-	-	Ruthin	-
Monday 26	-	Kingston	-	-	Monmouth	-	Mold	Presteign
Wednesday 28	-	-	-	Norwich &	-	-	-	-
Thursday 29	-	-	-	[city]	Gloucester	-	Chester	Chester
Saturday 31	Taunton	-	-	-	[& city]	-	-	-

NEW RULE OF COURT.

In the Common Pleas.

Hilary Term, 1838, 1st Victoria.

IT IS ORDERED, that on and after the 1st day of next Easter Term, every rule for judgment as in case of a nonsuit, after a peremptory undertaking and default, shall be absolute in the first instance.

IT IS FURTHER ORDERED, that from and after the last day of this present Hilary Term, it shall not be necessary to file warrants of attorney to prosecute and defend, previous to or at the time of signing interlocutory or final judgment, or at any stage of a cause.

IT IS ALSO FURTHER ORDERED, that from and after the last day of this Term, all judgments may be signed on the morning after the day on which the time for pleading has expired.

IT IS ALSO FURTHER ORDERED, that on and after the first day of next Easter Term, every motion for judgment against the casual ejector in ejectment in London and Middlesex, may be made on any day during the term.

N. C. TINDAL.

J. A. PARK.

J. B. BOSANQUET.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

To provide for the access of Parents, living apart from each other, to Children of tender age. Mr. Serjt. Talfourd.

[This bill stands for second reading on the 14th Feb.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[Leave has been given to introduce this Bill.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy. Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts. 14th Feb. Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb. Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

To make good certain Contracts of Banking and Trading Copartnerships.

The Chancellor of the Exchequer.

[In Committee.]

LAWS OF PROPERTY.

To improve the Tenure of Copyhold and Customary Lands.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases. The Attorney General.

[These bills have been read a first time.]

To alter and amend the Law relating to the Mortgages of Ships and Vessels.

Mr. G. F. Young.

[This bill has been withdrawn.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland. Mr. Lynch.

[This and the previous bill stands for second reading on the 21st Feb.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading the 28th Feb.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill is in Committee.]

To amend the 6 & 7 W. 3, for facilitating the Inclosure of Open and Arable Fields in England and Wales. Lord Worsley.

To render the Owners of Small Tenements

liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny. 12th Feb. Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges. 12th Feb. Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. 12th Feb. Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime. Mr. Barneby.

[This Bill stands for third reading.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales." Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament. Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To regulate the times of Payment of Rates and Taxes by Parliamentary Electors, and to abolish the Stamp Duty on the Admission of Freemen. Lord John Russell.

[This bill is in Committee, and stands for 27th April.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament. Mr. Hume.

[This bill stands for second reading, 19th Feb.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament. Mr. Warburton.

[In Committee.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales. Mr. Hume.

[For second reading, Feb. 19.]

THE EDITOR'S LETTER BOX.

A correspondent at Wolverhampton will observe that his wishes have been anticipated.

We gave an extra leaf with the number for the 3d February, comprising a general statement of the *Contents of Volume XIV*. Each volume will as heretofore be accompanied by a *Digested Index* to the Cases reported in the *Legal Observer*, with a General Index and Table of Contents.

A correspondent at Bradford is informed that the extra price of the Monthly Part to which he refers was occasioned by the Commissioner's Report on the Law of Partnership; and the taking of that Appendix and the Quarterly Digest is optional with the subscribers. There have been no double numbers for a long time past.

The subject of the proposed Distinctions at the Examination of Attorneys being a matter now under professional discussion, we cannot refuse the insertion of communications thereon, provided they are concise.

We beg pardon of "O." for mistaking his initial to the paper "On Professional Emoluments," at p. 264. Perhaps he will forgive us, as he does not write the plainest hand in the world.

Indorsement of Writs.—Holding to Bail.—

A Correspondent has requested some further information on the grounds of the decision in *Cooke v. Cooper*, reported at p. 108, *ante*. The question was, whether an indorsement of a writ, requiring bail for more than was stated in the affidavit of debt, and in the body of the writ, did not entitle the defendant to set aside the bail-bond? In addition to the observations of the Judges, stated in the former report, we are enabled to add the following:—

Mr. Justice *Patteson*—The new rules (M. T. 3 W. 4 s. 10) did not alter the practice, which is just the same as it was before. The new rules direct, in terms, something to be done; but it was done before, and if done wrongly, there would have been the same consequences as now.

Mr. *Humphrey*, in support of the rule, said, that the statute declared most distinctly, that if the insertion is not made, it shall be an irregularity, and may be set aside. The rule was made in order to carry into effect the positive provisions of a statute. It must, therefore, be deemed imperative. It would be a violation of the rule not to insert what was due. It is worse to insert more than is due. The party might not get bail for the increased sum. The sheriff is governed in taking bail by the amount indorsed on the writ, and that amount ought to be exactly what is due, and no more.

The judgment given, as stated in the former report, "*per curiam*," is what was said by Lord Denman, C. J. Mr. Justice *Patteson* merely repeated that this was no new practice—that the practice had been the same before, and the consequences would have been the same. The rule, therefore, was made absolute, for setting aside the proceedings on the bail bond, and delivering up the bond to be cancelled.

Erratum.—P. 267, for 11th Jan. read 15th.

The Legal Observer.

SATURDAY, FEBRUARY 17, 1838.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF CONTROVERTED ELECTIONS.

THE great topic of interest at the present moment, as well to the profession as the public, is the fate of the petitions now pending in Parliament against the return of certain of its members. On this, perhaps, hangs the existence of the present administration: it is the pivot on which the balance of party power is to turn, and the exertions and excitement connected with it are proportionably great. Woe to the member who is found absent from his post on the great field-days for which petitions are fixed! The man of business or of pleasure is held to be alike without excuse in any such dereliction of duty. The lawyer or merchant in vain pleads his urgent affairs; the dandy equally in vain talks of the nuisance of coming down: he is a marked man if he does not stand by his party. His name will be entered in the black list, and he will not get out of it in a hurry.

Near about the appointed hour the interest begins to increase. The members swarm in, the Speaker arrives; the Serjeant is sent out to scour the adjoining offices, and to drag in any loiterers, if such there be; the House is at last formed, and then comes the trial of strength. Never did officer in battle-field look down his line with more eagerness or scrutiny than does each whipper-in his row of men. Under the apparent good humour with which every thing is conducted lurks oftentimes vexation and anxiety. The member whose seat is questioned is busy in seeing if all his friends who promised to "stand a shot" for him are true to their engagements, and beholds the hostile rows with natural dismay.

The Speaker next orders the sitting member and petitioners, with their counsel

and agents, to be called in. If the petition is abandoned, no one answers to the call. If it is intended to be prosecuted, they approach the bar, and then follows the great struggle. The doors are locked, and the written names of all the members are placed in the glasses. The Clerk then takes out the first thirty-three names that come to hand, which are read aloud by the Speaker—if present, each member answers to his name; and we are sorry to say, that according to the party feeling of these members the Committee is pronounced by either side of the House a "good" or a "bad" one. These names form the materials of the Committee, as the parties retire, and each side strikes out a name until the thirty-three are winnowed into eleven; and, of course, if the original number had a strong party complexion, the extracts will have the same hue. The members generally left are those supposed to be moderate men, and new members are often in these cases preferred, as their party feeling is supposed not to be so strong as that of the older hands. This process is facetiously termed "knocking the brains out" of the Committee.

We have now endeavoured fairly to state the existing system on election petitions; and we cannot but regret that this is the tribunal by which such important matters are to be decided. We do not mean to say, that in a plain straight-forward case, a Committee will decide according to their party feeling; but we are bound in candour to admit, that where there is a fair ground of doubt raised, they will give their party the benefit of it. We think that the mode of choosing the Committee which we have described, is peculiarly liable to engender and strengthen this party feeling. Each side being thus pitted against each other, naturally acts according to their party pre-

judices, and we cannot help thinking that some plan might be devised for forming a Committee which should not be so much liable to this objection.

Under this state of things, if such remedy can be devised, we shall be most anxious to support it. The only one proposed is the bill of Mr. Buller, which we have already printed;* and although we are by no means satisfied that every part of his plan is good, yet we think it should be attentively considered, with the view, if possible, of improving the present system. The bill has been recently printed with amendments, and we shall here state the substance of the additions.

By clause D. it is proposed that the three assessors to Election Committees shall be named in the bill, and every assessor shall be entitled to hold his office until dismissed by her Majesty, upon an address from the House of Commons; and it is proposed to give each of the assessors 2500*l.* a-year.

It is also proposed that either party may apply for a Commission to take evidence, and we shall give the clauses for this purpose at length.

68. *CLAUSE (E.)—Either party may apply for a commission to take evidence.*—That in all cases in which witnesses are to be examined relative to any allegation in any such petition, the said committee shall, on the application of either party, make an order for the appointment of a commissioner for taking evidence for the use of the said committee thereon: provided always, that no such order shall be made unless the party intending to apply for the same shall, within days after the petition in question shall have been presented to the House of Commons, serve a notice on the opposite party or parties of his intention to apply for such order.

CLAUSE (F.)—Appointment of Commissioner and clerk.—That every such order shall be signed by the chairman of the committee, and shall be directed to the three assessors to election committees; and the three assessors, or any two of them, shall, by writing under their hands, appoint one of themselves, or one of such deputy assessors as aforesaid, to be the commissioner for taking evidence for the use of the said committee.

CLAUSE (G.)—Warrant to the Commissioner.—That as soon as the commissioner shall be appointed in manner aforesaid, the said assessors, or any two of them, shall issue a warrant under their hands and seals, directed to the commissioner so appointed, ordering him to repair to the city, borough, town or place in or for which the election or return complained of, or other subject matter of the petition,

arose, on a day to be named in the warrant, not less than fourteen nor more than twenty-one days distant from the day on which the said commissioner was appointed: and in case the said commissioner shall neglect or refuse to obey the order of the said warrant, he shall forfeit the sum of five hundred pounds; and the clerk of the said committee shall deliver or cause to be delivered to the said commissioner a true copy of the petition which shall have been referred to the said committee, and of the said lists and disputed votes and statements of the several parties which shall have been delivered before the said committee, together with a copy of the order made by the said committee, specially assigning the things respecting which the said commissioner is directed to examine evidence, and to report the same, together with all such other documents and papers as the said select committee shall think fit to be delivered to him.

63. *CLAUSE (H.)—Appointment of clerk to Commissioner.*—That every such commissioner shall be attended by a person skilled in the art of writing short hand, who shall be specially appointed by the clerk of the house of commons for the time being, and sworn by the chairman of the committee by which the order for the appointment of the commissioner was made, faithfully and truly to take down the evidence given before such commissioner, and, as occasion may require, to write or cause the same to be written in words at length for the use of the commissioner, and to serve the said commissioner as his clerk in the matters referred to him.

64. *CLAUSE (I.)—Proceedings of Committee thereupon to be reported to the house.*—That such member of the committee as shall be for that purpose appointed by the committee shall thereupon report the proceedings of the said committee to the house, and shall ask permission of the house for the said committee to adjourn until such time as the speaker shall by his warrant, in manner herein mentioned, direct the said committee to re-assemble, and upon such permission being granted, it shall be lawful for the said committee to adjourn accordingly.

65. *CLAUSE (K.)—Commencement of proceedings before the Commissioner.*—That on the day and at the place appointed by the said warrant, between the hours of ten in the forenoon and four in the afternoon, the said commissioner shall open his court by reading the warrant, the copy of the petition, and all other papers transmitted by the said chairman which the counsel or agent of any party before the said committee shall then require to be read; and the said commissioner shall, before further proceeding on the business of the said commission, take and subscribe the following oath in open court; (that is to say) &c.

66. *CLAUSE (L.)—Sittings of Commissioner.*—That the said commissioner shall sit every day (Sundays, Christmas-day and Good Friday only excepted), from an hour not later than the hour of ten in the morning till an hour not earlier than the hour of four in the

* See *ante*, p. 87. See also a summary of the present practice, p. 1.

afternoon, and shall not adjourn for a longer time than twenty-four hours, except as herein provided, unless Sunday, Christmas-day or Good Friday shall intervene; and in case of such intervention, every meeting, sitting, or adjournment shall be within twenty-four hours from the time of appointing or fixing the same, exclusive of such intervening day.

67. *CLAUDE (M.)—Powers of Commissioner*

—That the said commissioner shall have power, by warrant under his hand and seal, so send for all persons, papers and records concerning the matters so referred to him, and shall examine all witnesses who shall come before him upon oath, which he is hereby empowered to administer, and shall in all respects have the same powers for examining the matters so referred to him as any select committee of the house of commons on controverted elections has for examining the matters and things referred to such select committee; and the clerk appointed as aforesaid shall from time to time make or cause to be made true copies of the minutes of all proceedings before the said commissioner, and of all such evidence as shall be given before him, and shall give one such copy to each of the parties interested, or his or their agent, or to such of them as shall demand the same, on being paid the sum of three pence for each sheet of the said copy, consisting of seventy-two words.

68. *CLAUDE (N.)—Commissioner may enforce attendance of witnesses.*

—That it shall be lawful for the said commissioner, by warrant under his hand and seal, directed to any constable or constables, or to any other person or persons, specially appointed by him, to summon and require the attendance of any witness or witnesses, or other person or persons before him, at the day and place to be mentioned in the said warrant; and if any person summoned as a witness as aforesaid shall neglect or refuse to attend without lawful excuse, to be determined by the said commissioner, or if any witness before such commissioner shall prevaricate or shall otherwise misbehave in giving or refusing to give evidence, or if any person shall be guilty of any contempt or misbehaviour whatsoever of or towards the said commissioner while sitting and acting in the execution of the said commission, the said commissioner is hereby empowered by a warrant under his hand and seal, and directed to the gaoler of the common gaol of the county or place in which the said commissioner shall sit, to commit such person, not being a peer of the realm or lord of parliament, to the custody of the said gaoler, without bail or mainprize, for any time not exceeding one calendar month.

69. *CLAUDE (O.)—Persons giving false evidence guilty of perjury.*

—That every person who shall wilfully give false evidence, or make any false oath or affidavit before the said commissioner, or before any justice of the peace, touching any thing provided for by this act, being convicted thereof shall be liable to the penalties of wilful and corrupt perjury.

70. *CLAUDE (P.)—Attendance of Members of Parliament.*

—That in case it shall be requisite to summon an Member of Parliament to

give evidence before the said commissioner, who shall be then attending his duty in Parliament, the commissioner shall certify the fact to the Speaker of the House of Commons, who shall report the same to the house.

71. *CLAUDE (Q.)—Evidence to be sent to the Speaker.*—That as soon as conveniently may be after the evidence before the said commissioner shall be closed touching the matters referred to him, the said commissioner shall cause a copy of the minutes of his proceedings to be made, and shall sign and seal the said copy, and shall send by his said clerk the said copy to the Speaker of the House of Commons, who shall communicate the same to the said House; and after sending such copy, the commissioner shall adjourn, in order to receive such further orders from the select committee upon the petition in question as such committee may from time to time think fit to give.

72. *CLAUDE (R.)—Committee to meet again.*

—That at the next sitting of the House after the copy of the said proceedings before the commissioner shall be received by the Speaker of the House of Commons, the Speaker shall inform the House of his having received the same, and the House thereupon shall order the said select committee to meet again; and the said committee shall accordingly meet again, and shall take the proceedings of the said commissioner into consideration, and shall proceed to try and determine the merits of the said petition, in the same manner as select committees on controverted elections are directed to proceed, save that the said committee shall not call for or receive, except as herein-after provided, any other or further evidence respecting any thing which shall have been tried and examined by the said commissioner in manner aforesaid, but the said committee shall determine on all such things from the written minutes of the evidence and proceedings before the said commissioner, and the certificate of the said commissioner, so signed, sealed and transmitted as aforesaid: Provided always, that the said committee may hear counsel as to the effect of the said evidence, in like manner as they may do respecting any other matter in question before them, and that the said select committee shall report their opinion to the House upon the whole merits of the said election, or other matter of the said petition.

73. *CLAUDE (S.)—Commissioner may be directed to receive further evidence.*

—That the said select committee shall (from time to time during the continuance of the said committee, and at any time before reporting their final opinion to the House on the merits of the petition in question) have full power, if they shall think fit, to direct any further or other warrant to the said commissioner, under the hand and seal of the chairman of the committee, ordering the said commissioner to re-open his Court for such purposes as shall be in the said warrant specified; and that such and the like proceedings shall be had upon such further warrant as are herein directed with respect to the warrant herein first mentioned.

AS TO THE RIGHT OF A SOLICITOR TO DISCHARGE HIS CLIENT.

In our former articles on the subject of Solicitors' liens on papers in a suit,* we endeavoured to show that where a solicitor refuses to continue proceedings without being paid his costs; or where he dissolves the connection between himself and his client, by transferring the client's business and papers to another solicitor, he is held *to have discharged his client*, and that his lien upon the papers in a pending suit is in effect destroyed by the power given by the Court to any other solicitor who may be employed, to have the use of all papers which may be necessary for conducting such suit.

Our next enquiry is under what circumstances and in what manner a solicitor may discharge his client during the progress of a cause; and it is the more important, because until a comparatively recent period, it was generally thought that a solicitor, having once commenced proceedings, was bound to continue them to their termination. In *Creswell v. Byron*, 14 Ves. 273, a case was cited, where Judges Buller and Heath said, that if a solicitor did not go through with a cause, instead of having a lien, he could not bring an action for his bill; and even so late as the 9th edition of Tidd's Practice, it is stated on the authority of a case in *Siderfin*, that where an attorney once appears, or undertakes to be attorney for another, he shall not be permitted to withdraw himself; and it is said to be his duty to proceed in the suit, although his client neglect to bring him money." This ancient doctrine is now, however, completely exploded; and it may be considered as settled that, where a solicitor gives his client reasonable notice of his intention not to proceed further in a cause, he is at liberty to withdraw and insist upon payment of his costs.

The new rule was recognised in *Lord v. Wormleighton*, Jac. 580, and was fully acted upon in *Rowson v. Earle*, 1 Moody and Malkin, 538. In the latter case, which was an action of assumpsit on a solicitor's bill for business done in Chancery, it appeared that the plaintiff undertook the management of a cause after the defendant had put in his answer, and conducted it for two years, until a decree and the Master's report had been obtained, and then, after

notice, gave up the papers and refused to proceed further for want of funds. The defendant objected to pay, upon the ground that it was the plaintiff's duty to proceed; but Lord Tenterden said, that it was not to be expected that any attorney will carry on a cause to an indefinite length, unless he is furnished with funds so to do; and that the plaintiff, having given notice he would not go on, was perfectly justified in refusing to do so unless the funds were supplied.

In *Van Sandau v. Browne*, 9 Bingham, 402, the rule was again acted upon, and the remarks which fell from the Bench on their delivering judgment in that case were of a character deserving particular attention. The plaintiffs had defended an action, and, under the advice of counsel, instituted proceedings in Chancery for the defendant. They had repeatedly given him notice that they would not proceed further unless supplied with funds; and he, having refused to comply with their requests for payment of their costs, they at length arrested him. The case in *Siderfin* was strongly relied on by his counsel, as an authority for shewing that an attorney forfeited his claim if he did not continue proceedings in a cause to their termination; but Tindal, C. J., stated that the circumstances in that case must have been different; and Gaselee, J., observed, that since the days of *Siderfin* there had been a great increase in the expense of conducting a cause, and it would be hard to compel an attorney to go on when he is not furnished with the necessary funds. The other Judges also stated that an attorney cannot suddenly and without notice abandon his client; but if he gives reasonable notice, he is at liberty to discontinue his proceedings whenever he thinks proper.

So, in the more recent case of *Hains v. Osborne*, 2 Crompt. & Mees. 632, Mr. Baron Parke thus delivered himself:—"In ancient times, the contract of an attorney to carry on a suit to its termination was considered an entire contract, of which an attorney could not divest himself by any means; but, in consequence of the increased expenses of suits in modern times, the rule has been varied, and the attorney is at liberty to determine the contract on reasonable notice."

What may be deemed reasonable notice, must depend upon the circumstances of each case. In *Hoby v. Buitt*, gent., 3 Barn. & Ad. 350, which was an action of assumpsit for negligence, it appeared that the defendant undertook the defence of two causes for the plaintiff, which were to be tried at the

* See pp. 196, 261, ante.

assizes; and, on the Saturday before the commission day (which was on the Thursday following), gave notice to the plaintiff that he would not proceed to trial without funds. The trials came on, and no defence being offered, verdicts passed in both actions against the defendant. On the trials, the Judge held that, although an attorney is not bound to proceed, yet he cannot, on the eve of the assizes, abandon a cause without giving his client a reasonable opportunity of resorting to other assistance: and, on the motion for a new trial, the Court stated this direction to be quite right, and that it having been left to the jury to say as a fact whether reasonable notice was given, and they having found it was not, the verdicts could not be disturbed.

From the above cases, and those quoted in our former articles,^b it may be inferred that a solicitor's right to recover his costs is not affected by his refusal to continue proceedings after reasonable notice to his client of his intention to stop, although his lien is in effect destroyed by such notice, and that his lien is not affected by his requiring or enforcing payment of his costs, unless he refuses to proceed.

NEW BILLS IN PARLIAMENT.

PAYMENT OF RATES.

This bill recites that by the 54 G. 3, intitled "An Act to repeal certain provisions in local acts, for the maintenance and regulation of the poor, and to make other provisions in relation thereto," it was among other things enacted, that it should be lawful for any two or more of his Majesty's Justices of the Peace, acting for the county, riding, division or jurisdiction in which any district, parish, township, or hamlet should be situated, in petty sessions assembled, on application made to them by any person rated to any rates or cesses within any such district, township, parish or hamlet, to be discharged therefrom, and proof of his or her inability, through poverty, to pay such rate or cess, with the consent of the churchwardens and overseers of such district, parish, township or hamlet, or of such other person or persons as is or are competent to act under the authority of any act or acts of parliament for the ordering, management, controul or direction of the poor of any such district, parish, township or hamlet, to order and direct that such person shall be excused from the payment of such rate or cess, and to strike out his or her name therefrom, and the sum at which such person was so rated in such rate or cess shall not thereafter be collected, or any

person or persons charged therewith, or in any matter called on or liable to account for the same, or for omitting to collect or receive the same: and reciting that it is expedient to repeal the same, and to substitute other provisions and enactments in lieu thereof; It is therefore proposed to be enacted as follows:

1. Part of recited act repealed.
2. That two or more of her Majesty's justices of the peace acting for the county, riding, division or jurisdiction in which any district, parish, township or hamlet shall be situated, in petty sessions assembled, on application made to them by any two or more of the churchwardens or overseers of such district, parish, township or hamlet, or of such other persons as are competent to act under the authority of any act or acts for the ordering, management, control or direction of the poor of any such district, parish, township or hamlet, or on application made to such justices by any person rated to any rates or cesses within any such district, township, parish or hamlet, for the discharging of such person therefrom, and proof of his or her inability, through poverty, to pay such rate or cess, may order and direct that such person shall be excused from the payment of such rate or cess, and may strike out his or her name therefrom; and the sum at which such person was so rated in such rate or cess shall not thereafter be collected, or any person or persons charged therewith, or in any manner be called or liable to account for the same or for omitting to collect or receive the same.

3. That no such order or direction shall be made by any such justices, on application of any such poor person as aforesaid, unless it shall be proved to the satisfaction of such justices that seven day's notice of such application shall have been given, by summons or otherwise, to two or more of such churchwardens or overseers, or other persons so competent to act as aforesaid.

4. That no such order or direction shall be made respecting any person rated to any rates or cesses within any city or town corporate or borough, returning a member or members to parliament, unless on the application of the person so rated to any rates or cesses, and desirous of being discharged from the payment thereof.

BANKING AND TRADING COPARTNERSHIPS.

This bill, as amended by the committee, recites that divers associations and copartnerships, consisting of more than six members or shareholders, have from time to time been formed for the purpose of being engaged in and carrying on the business of banking and divers other trades and dealings for gain and profit, and have accordingly for some time past been and now are engaged in carrying on the same by means of boards of directors or managers, committees or other officers, acting on behalf of all the members or shareholders of, or persons otherwise interested in, such association or copartnership.

^b See pp. 196, 261, *ante*.

And that diverse spiritual persons, having or holding dignities, prebends, canonries, benefices, stipendiary curacies or lecturships, have been and are members or shareholders of or otherwise interested in divers of such associations and copartnerships, and it has not been commonly known or understood that the holding of such shares or interests by such spiritual persons was contrary to law; or that contracts entered into by such associations or copartnerships could not be enforced.

And that it is expedient to enable such associations or copartnerships to enforce contracts heretofore entered into by them or which for a limited time may be entered into by them, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders, or otherwise interested as aforesaid;

It is therefore proposed to be enacted,

1. That no contract heretofore entered into, or which before the end of the next session of parliament shall be entered into, by any such association or copartnership, already formed, or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, shareholder, manager or director of or otherwise interested in the same; but all such contracts shall and may be enforced in the same manner to all intents and purposes as if no such spiritual person had been or was a member, partner, shareholder, manager or director of, or interested in such association or copartnership.

2. That in all actions and suits which shall have been brought or instituted by or on behalf of any such association or copartnership, in case any defendant therein shall before the sixth day of February one thousand eight hundred and thirty eight, by plea or otherwise, have insisted on the invalidity of any contract thereby sought to be enforced, by reason of any such spiritual person as aforesaid being or having been a member or shareholder in such association or copartnership, such defendant shall be entitled to the full costs of such plea or other defence, to be paid by the plaintiff and to be taxed as the court in which the said action or suit shall be depending, or any judge thereof, shall direct; and in order fully to indemnify such defendant it shall be lawful for such court or judge to order the plaintiff to pay to him such full costs (if any) of the said action or suit as the justice of the case may require.

REFORMS IN EQUITY PROCEEDINGS.

[The following concludes for the present the valuable suggestions of the late Mr. Bell.]

"The leisure time of the Court of Appeal in Bankruptcy might be applied in administering assets in legacy cases, and even in cases of

debts owing by a party deceased. Our law on the subject of administration of assets is a disgrace to any civilized country. The distinction between specialty and simple contract debts in regard to preference is absurd, especially in a commercial country. The preference which executors and administrators are authorized to give, is knavish in the extreme, if it was not made necessary by there being no law requiring the executors in a given time, and in a given mode, to call upon the creditors, and distribute amongst them the assets which had been, or by due diligence could have been got in; whilst the whole system of pleading at law on the subject, as far as I understand it, is a compound of legal subtilty and knavery.

"It ought to be completely remodelled, but I know of no plan which would answer that purpose, except in case of disputes adopting some proceeding analogous to that of the Court of Chancery; but that Court has brought itself into such disgrace by the delay which was so long allowed to prevail in it, and the scandalous plunder which was till lately permitted to prevail in the Master's office, that any attempt to give the general administration of assets to the Court of Chancery, or to a Court acting upon a similar plan, in exclusion of a Court of Law, except as far as was necessary to ascertain the demand, would no doubt meet with strong opposition; and especially as the gentlemen at the common law bar, are not aware of the short period in which a suit for the administration of assets may be brought to a conclusion, if duly prosecuted by a solicitor of skill before a Master of competent judgment, and no improper delay arises on hearing exceptions to a Master's report.

"On these grounds I think, in the first instance, jurisdiction should be given to the Court of Review in cases of legacies only; and if exclusive jurisdiction was given, it should be confined to cases where the assets are only to a limited amount, or none of the legacies large, though, in my opinion, if the mind of the public were sufficiently enlightened, the whole law on the subject of assets should be reviewed, and a proper plan for their general administration adopted."

SELECTIONS FROM CORRESPONDENCE.

FINES AND RECOVERIES ACT.—PERPETUAL COMMISSIONERS.

Sir,

WHEN this act was passed, it was generally understood that the same would not only simplify the passing of the estates of married women and other estates, but also cause a considerable reduction in the expenses formerly attending the same. The first object has, indeed, been obtained; but, owing to the system pursued in the appointment of perpetual Commissioners, the latter has not been effected. In the first place, there are towns containing each some thousands of inhabitants, which

possess only two Commissioners; and in Wales several towns are favoured with one only, notwithstanding remonstrances made for an increase: the inevitable consequence of which is, that owing to their being such a thin sprinkling of Commissioners, the difficulty arising from different causes in procuring two to meet, and the expenses of the journeys of the Commissioners, clients and solicitor, to say nothing of the anxiety and delay attending this state of things, the expense of one of the new assurances amounts, in the majority of country cases, to nearly, and in some quite, equal to that of the old fine. A simple remedy for the evil could be found, by making all attorneys eligible to be commissioners, as under the former system of Fines and Recoveries, and either with or without the payment of a small sum for the appointment. Why the attorneys should, as a body, now be considered unworthy to be Commissioners, the parties to, and the objects of, the new assurances being the same as before, it is rather difficult to conceive: at all events, some alteration is loudly called for, particularly in the country; and I do hope that these observations may fall in the way of those who have the power to remove the grievance.

E.

CERTIFICATED CONVEYANCERS.

Sir,

I read with regret the unmerited attack upon conveyancers by your correspondent, on "Taxes on Solicitors," which (to use his own expression) is "very galling" to those whom he is bold enough to term both "illiterate and unlearned," "knowing no more than those who black their shoes." It is obvious our friend, in his zeal for his cause, has made an unwarranted breach of all professional fellowship and good will, and I think it is equally clear that conveyancers generally have as much opportunity, and are, if not more, quite as proficient in a knowledge of the laws of real property, especially its "principles," as the "regular bred practitioner," whose bread, instead of being "taken out of their mouths," is (if I may use the expression) often rendered more delicious by passing through their hands; and, as to the concluding paragraph, what a pigmy would his instances of "putting the uses before the habendum," &c. &c., appear, were some of the errors of the "regular bred practitioners" made public, (especially those which happened before the recent rules on the subject of examinations.) In conclusion, I hope I am as earnest in my wishes for the entire abolition of the annual certificate tax, as your correspondent; and I trust he will not, in his advocacy of that cause, throw out such imputations on, *perhaps*, as respectable and intelligent a body of professional men as the "regular bred" practitioners.

A. W. G.

REMOVAL OF THE COURTS FROM WESTMINSTER.

Sir,

At the present time, when the public are in every thing seeking for improvement where-

ever practicable, it appears singular that a better arrangement of the Courts of Law has not been under consideration. It is a subject which requires immediate attention, and in which is involved the convenience of almost every member of the legal profession. The great inconvenience of the courts being held in Westminster Hall, so far from the Inns of Court, must be felt, by every one in the habit of attending them, as a grievance, for which ingenuity might easily suggest a remedy. Could not they be held in some other place, near to the Inns of Court? The Courts themselves are, as noticed in your number of the 26th of January, defective and inconvenient in other respects; but the inconvenience above-mentioned is still greater, and more continually felt.

VIGIL.

[Our correspondent is mistaken in supposing that this subject has not been considered. We have noticed it fifty times.—Ed.]

SERVICE OF PROCESS—OFFICE ATTENDANCE.

Sir,

The profession have for the last two Terms had an opportunity of witnessing the working of the rule of Court which abolishes the evening attendance in the law offices; and I think no one can with propriety do otherwise than approve of the convenient time now allowed for the dispatch of business; but it is to be lamented that at present nothing has been done to relieve the attorney's clerk from his laborious servitude. He is still detained at his office till 9 o'clock in the evening, which surely cannot now be necessary, the public offices being all closed in the evening. That ornament to the profession, the Law Society, is daily endeavouring to effect reforms by annihilating abuses; and I must say that it is to be regretted that so many of its best members, who are at the head of large establishments, should be so backward in setting that example to the whole body, which would be the means of putting an end to the *present system of serving declarations, pleas, notices &c., a few minutes before 9 o'clock*. I could enlarge upon the latter subject, but nothing will prove available, till there is an *uniformity of attendance* in the attorneys' offices.

A COMMON LAW PRACTITIONER.

DISTRESS FOR RENT.—BROKERS' CHARGES.

At 12 o'clock at noon on the 2nd October last, the goods of a poor man were distrained for rent, due the previous quarter day. Immediately on the expiration of five days, viz., immediately after 12 o'clock at noon on the 7th, the goods were condemned and sold in the usual way. At three o'clock in the afternoon, on the 26th December last, a distress was levied on other goods of the same person, which was paid out at 11 o'clock the following morning. In the first levy, the broker charged six days' possession-money, and in the second two, nor would he leave possession until paid.

I am aware it is customary to charge as this broker did, but is it legal? See 57 Geo. 3, chap. 93, and *Wallace v. King*, 1 H. Black, 13.

C. B.

ON LEGAL EXAMINATION DISTINCTIONS.

To The Editor of The Legal Observer.

Sir,

The question as to the propriety of distinguishing the candidates for admission, according to the legal attainments displayed at their examination, has undergone considerable discussion in your journal, as the organ of the profession.

Wishing, as I do, to see the justly-influential profession of the law raised high in the public estimation, I could not but desire to see the proposed distinctions effected, if by that means an object so desirable could be obtained. But with that wish fully in view, I cannot think that such a plan would succeed in accomplishing what it promises.

The duties of a solicitor are very numerous, and very perplexing, and success is only insured by a firm and indefatigable attention to the interests and real welfare of his client. His distinction as a solicitor is gained, not only by his legal attainments,—they effect much—but by his trustworthiness, his scientific knowledge, and his observations of human nature, and by acting as mediator in settling matters where his clients, from excitement, are incapable of acting rightly. He has to propose and execute plans and contrivances, which at first sight, are quite foreign to his duties as a solicitor, regarded only as a practitioner. In short, it is almost as difficult to detail the various characters and duties the solicitor has to assume and perform,—and must perform, if he would be looked upon as eminent in his profession,—as the poet in *Rasselas* found it to define the qualifications of his employment.

If then, the true capability of a solicitor is shewn by his abilities in performing these numerous and important duties, how can it be possible to come at a knowledge of a man's competency for his profession, without proof that he has been tried in these peculiar points, and not found wanting, but at all times trustworthy—at all times skilful and sagacious, and at all times willing to forego pecuniary profit rather than suffer his client's interests to be injured by carrying cases to Court, which though exciting to the client, yet from the solicitor's observation and experience would be frivolous to the jury?

Any distinction that could be granted would have the effect of holding forth its possessor to the world as a person competent to act efficiently as a solicitor. Now let the disputants in this discussion candidly consider whether it would characterise his abilities—whether it would be right to let the public infer from his legal attainments, that he possessed every qualification necessary to carry the varied interests of clients to a successful termination. Looking at the general knowledge and attainments requisite to insure such an object, I am

sure they must think that it would lead to an inference of abilities as yet unknown to the Examiners, and placing the successful candidate in this light, would operate to the prejudice of those, who not obtaining, from some cause or other, the honours proposed, but fully qualified, and possessing qualities of that general order requisite for placing them high in the esteem of their professional brethren.

Whatever the distinction might be, I presume it would not answer the purpose of its proposer that it should remain secret, therefore it would be made public,—it would certainly act as a lure to obtain clients; it would directly be presumed, that persons were by such an addition better qualified to conduct the varied business of solicitors, than those whose names were unadorned, or not made public. The consequence would be, and not an inconsistent one, that they would be found—despite of the legal knowledge which gained them the honor—either not trustworthy, or not skilful in practice, or that their very application to the study which earned them the distinction had withdrawn from their notice the importance of the knowledge of other subjects besides law. Clients thus finding their confidence misplaced, or insufficient ability shewn in their affairs, from persons whom they anticipated as possessing these qualifications in an extraordinary degree, would naturally abominate the whole examination, as a trick and deception.

It is for these reasons, and considering the consequences which would ensue, that I am induced to think lightly of the proposed addition to the examination; and I shall be borne out in the argument of the importance of general scientific attainments, by a perusal of Mr. Chitty's excellent work on the *General Practice of the Law*, vol. 2, part 1.

The utility of the proposed distinctions has been attempted to be shewn by analogy to degrees at the Universities. I shall dismiss this argument with a short answer, for I cannot think its ingenious proposer places much confidence in it, in bearing out his general argument. When honours and degrees are the principal incentives to study, they are certainly useful in emulating the student to great exertions, in order to obtain an honourable superiority over his fellows. These honours being not taken by their possessor, among any class of men who would unduly appreciate them in comparison with others, for this reason are not productive of harm. They shew that he has been diligent in some particular and specific branch of knowledge, please the student, and delight his friends, and there the matter rests. But a similar course would effect a very different result on the body of solicitors; for instead of any particular and determinate excellence being indicated by the distinctions proposed, they would intimate or be mistaken for a superior capability of undertaking complex duties and responsibilities, which could only be testified by actual experience, and thus would they impede the fair progress of the less brilliant but sufficient lawyer, who with more general and useful practical knowledge,

would be left neglected and undeservedly despised.

The examination, on the plan now pursued, and with its increasing strictness, will effect results which, so far as legal knowledge is concerned—and let me not be misunderstood as thinking lightly thereof,—cannot but be productive of good, both to the profession and the public. Let us be content with this, and deprecate the course which would draw a needless and injurious distinction between those who have *sufficient* legal knowledge, and those whose *legal* knowledge would carry them through a more trying ordeal,—saying that it is not legal knowledge alone, which entitles them to esteem, or secures success among those who would misunderstand, and be misled by legal honours too nicely awarded.

Your correspondent "Studens" very kindly wishes to moderate the wishes of both parties by his mode of certifying the distinction. Such plan may not be productive of bad effects: it would be gratifying to the candidate, and with his name and others who might merit it printed in the Monthly Supplement of your Journal, circulated as it is, among those who are capable of truly estimating the merits of such an honor, would gratify his legal friends. I should however submit that it is better to let the candidate earn his true distinction by the trial of his abilities, his experience and sagacity, without resorting to equivocal honors, applicable but to one branch of that knowledge which raises a solicitor among his professional brethren.

G. H.

[An able letter from another correspondent, which we deferred last week, appears, on perusal, to go over nearly the same ground as his fellow-laborers on that side of the question. He will therefore, we trust, excuse our further postponing his remarks. Ed.]

Sir,

Notwithstanding all that your correspondents, C.; W. A., and "Studens," have said in favour of the proposed Legal Examination Distinctions, I cannot help thinking with J. N. that the proposal, as it now stands, is unfair.

The awarding of distinctions and prizes has certainly a very great effect in causing emulation and activity, even among some whom nothing but the love of fame would bring forth from their innate idleness; and it undoubtedly has been very serviceable, not only at the universities, but at Apothecaries' Hall, and the College of Surgeons. But let us consider, in the first place, how far it would be at all applicable or serviceable to the profession of the law,—a profession upon which most of its members have to depend for a livelihood, and to whom, one would say, no greater spur could be given;—and in the next place, let us point out the difference which exists between the examination for prizes at the universities and the medical institutions, and that which is now under consideration.

The present system of examination appears to me to answer every purpose for which it was

intended; the applicants for admission have five different subjects to work upon; they have five years in which to get up these subjects, and 99 out of 100 are in offices where they only see one or two, or at most, three of these different branches carried on. How then is it possible for them to be quite conversant with them all? The examinations are, doubtless, conducted with the strictest degree of honour and fairness; but how can it be expected that any men, however acute and talented they may be, shall be able to distinguish, out of a number of upwards of 100, the one or two candidates who have answered their questions, *on the whole*, with the greatest ability? The ultimate result of giving prizes, at such an examination, would be, that the examiners would all endeavour to get a smattering of each subject, and thereby would not be able to do what would be of much more importance to them, *viz.*, to get a good, sound, permanent knowledge of that branch of law which they would expect to be called upon principally to practise.

Your correspondents, C. and W. A., lay great stress on the examinations for prizes which are carried on at the universities, and at the medical institutions; but if they will take the trouble to enquire upon what examinations prizes are given at these places, they will find that those examinations are totally different to the examinations of attorneys previous to admission. At the universities, the examinations for prizes embrace only *one subject each*, and the examiners are composed of men who have all studied at the same place, and have had equal opportunities of improvement and study. And who ever heard of there being prizes or distinctions awarded to any one on passing his examination for admission, either as a surgeon or an apothecary. Such a thing has never been thought of. They go upon the proper and common sense system.—"If we consider you qualified to practise as a member of our body, we admit you, without letting you know that you would have been qualified, though you had not been so clever as you really are." The only prizes and distinctions given by the medical institutions, are those given by the different tutors and professors to their pupils who have attained the greatest proficiency in *the one subject* of which the donor of the prize is professor. *Such examination has nothing whatever to do with the examinant's admission.*

There is also another objection to the proposed system, and that is, that at every examination we see men go up who have been in solicitors' offices ten, fifteen, or even twenty years, before applying to be admitted; perhaps one because he had no chance of getting into practice, or had not the means of starting when his articles expired. Another, who has been three or four years in an office after the expiration of his articles for the purpose of improvement; and a third, who has served five or ten years in an office before he has been articulated. How can their younger brethren be expected to cope with these?

Away then with this project of awarding prizes or giving distinctions on the examination

for admission. Any unprejudiced person, knowing anything of the subject, must at once perceive, not only the inefficacy and inutility, but the evident impracticability of making such a rule with advantage to the profession. If the examiners choose to give prizes, let them be given for the greatest proficiency in a *certain single branch* of the law, and not on such a general system as appears to have been thought of by some of your correspondents. Let the examiners be allowed to please themselves whether they will try for such prizes or not, and not be compelled to try the contest by having the prize or distinction given at the time they are obliged to go through their examination.

J. R.

Sir,

I am glad to perceive that some able and spirited gentlemen have come forward and so successfully exposed and refuted the jog-trot, (or rather stand-still,) and somewhat contracted views of your correspondent J. N., on the important subject of Legal Distinctions.

A proper comparison has been too often made of the usages in this respect of the other learned professions, to justify any new reference to such a ground; I will request to occupy a new position, and humbly contend, that when an efficient candidate merely receives his certificate and is admitted, he only obtains a *right*, (for it can scarcely be viewed as a very particular privilege,) to which he has become entitled by the law of the land, by an adequate purchase, and frequently by a laborious probationary servitude. I submit, that where an examination, or any other additional or unexpected obstacle to admission is proposed, in common fairness and prudence, the adventurous applicant ought to be animated by some additional stimulus, which should also ultimately compensate him for, and reconcile him to, what might otherwise seem, not only an unexpected, but an excessive exaction. I respectfully beg to add my own personal experience, in some confirmation of the statement advanced by the three talented gentlemen whose excellent communications appeared in your last number, that the opinion of both students and practitioners, greatly preponderates in favour of making honours and testimonials accessible to members of the legal as well as other professions.

Many country students will learn with alarm, that the honorable and learned Board of Examiners have just announced, in the circular to the Easter candidates, that they will expect the Equity questions to be no longer shirked, but to be henceforth peremptorily and indispensably answered by all. Here is a new feature of prospective strictness, and as yet unmixed, unpalliated, unsweetened with the promise that the fagging student, who must now be well prepared for interrogation in all the leading principles and departments of the practice of the law, (excepting, perhaps, bankruptcy,) shall have his last months of intense application, and conflicting feeling, and honorable aspiration, acknowledged by

any other certificate than that he, in common with his numerous competitors, is found capable to act as an attorney!—Surely an immediate change in this respect is necessary. It is loudly called for, and it is much hoped that such will be adopted before another term expires; it must sooner or later inevitably be instituted, and therefore why should the candidates of this summer be deprived of advantages which are likely to be accessible to future and better prepared clerks?

This plan cannot fail of having a most salutary effect; it will re-brighten the eyes of the laborious student, and re-animate his frame to renewed or even untried perseverance. It will shed a lustre on the profession, further testify its liberality and willingness to acknowledge and reward superior merit, promote the present improving character of the profession, and increase and strengthen that profession's claims to eminence and public respect. Romance is not needed to fancy the possessor of a testimonial, hereafter recurring with feelings of high satisfaction to a retrospect of his past studies, and encouraging his posterity or pupils to earn similar distinctions. Speculation may exist as to whether the present limited number of queries in each department of the examination be sufficient to ascertain the degree of some candidates' general ability, but this subject does not appear to be so much agitated among students, as the conviction of the necessity for, and utility of distinction. I am also inclined to think, that from the expense incurred on entering and pursuing articles of clerkship, there are very few students who can be considered as labouring under disadvantages of slender fortune or inferior opportunities, to the extent J. N. would fain point out.

A CONSTANT READER.

EXPLANATORY REGULATION OF THE EXAMINERS.

A CORRESPONDENT has noticed the statement in the Legal Observer (p. 272), "that the candidates at the next Examination will be expected to answer the questions in three or more out of the five classes of questions,—of which Common Law and Equity must be two;" and he inquires "whether every question in those three must be given, or will answers to some of the questions in the other two classes be allowed to compensate for a failure in one or more of the questions in the three? And is the answering in Common Law and Equity considered so necessary, that a person omitting one of them, but duly replying in the four other departments, would be rejected?"

By the circular issued by the Examiners on the 1st instant, addressed to the several candidates who have given notice for Easter

Term, it appears that "a paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and practice of the Courts. 6. Criminal Law. Each candidate is required to answer all the Preliminary Questions, No. 1,^a and it is expected that he shall answer in *three* or more of the other heads of inquiry,—*Common Law* and *Equity* being two thereof."

It is evident that this notice, which is a mere explanation of the mode of conducting the examination, and not a new regulation, does not require *every* question in these departments to be answered. The candidates are to answer "in three or more of the heads of inquiry." We presume that if a certain proportion of questions in three of the classes be answered correctly, and some incorrectly, that the candidate's case would be assisted by correct answers in one or both of the other two classes.

So far we think there can be no doubt that we may safely answer the queries of our correspondent. On the last point—namely, the entire omission of any answers in one of the two branches of Equity and Common Law—we can scarcely venture to give a decided opinion. We think, however, that the candidate, according to the regulation, should answer such questions as he can, both in Common Law and Equity. He has had fair notice that he will be expected to answer in those departments, and he may read the proper books and acquire sufficient knowledge of the law, though the practical experience derived from the office in which he is articulated may be defective. Let him do his best, and the Examiners will, no doubt, take all his answers into consideration. It seems, from the notice given, that the candidate would be liable to be rejected if he answered no questions in Equity, or none in Common Law, or answered them insufficiently; but what may be deemed the smallest amount of knowledge, either in Equity or Common Law, which will entitle a candidate to pass, or what extent of other kinds of legal knowledge will be received as a "compensation"

^a The Preliminary Questions are: "Where did you serve your clerkship? State the particular branch or branches of the law to which you have principally applied yourself during your clerkship. Mention some of the principal law books you have read and studied."

for failure, it appears impossible for any one to say; because, although certain general rules may be laid down to aid the Examiners in their decision, each case of rejection must be judged by itself, after taking all the circumstances into careful consideration.

With respect to the Examination of last Hilary Term, we understand it terminated in the postponement of seven candidates, and the withdrawal of another on account of illness.

The notices of admission for next Easter Term are 136, out of these no less than twelve have already passed their examination. Then there are three who have given admission, but not examination notices, and who consequently cannot be examined without special leave of the Court, and it is probable the Court will at length put an end to these applications for indulgence. Besides these, it appears that seven notices of examination have been given without notices of admission. The latter are regular, inasmuch as the parties may be examined in Easter and admitted in Trinity, if they give notice of such admission three days before Easter Term. On the whole, consequently, there are 128 candidates for examination in next Term.

The Examiners have fixed Tuesday, the 1st May, for taking the Examination.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—TITLE TO SUE IN FORMA PAUPERIS.

*To entitle a person to sue in formâ pauperis, it is not enough for him to swear that he is not worth 5*l.* after payment of his just debts, except the matter in question, if it be shewn that he has a yearly income beyond that amount; but he is bound to give the names of his creditors, and state the sums due to them respectively.*

Mr. Puller moved to discharge an order granted at the Rolls, giving the plaintiff leave to sue in *formâ pauperis*.

The Lord Chancellor, finding that the order made at the Rolls was not drawn up, desired the question to be argued as if no order was made.

Mr. Puller said he had affidavits proving that the plaintiff had an income of 50*l.* a year, under a will. In his affidavit made at the Rolls, in support of his application to sue in *formâ pauperis*, he swore he was not worth more than 5*l.* in the world, if his just debts were paid,

except as to his interest in the subject-matter of the suit. The learned counsel argued that such an affidavit was not sufficient, and relied on *Spencer v. Bryant*.^a

The *Lord Chancellor*.—You do not falsify the plaintiff's affidavit, which is framed according to the practice of the Court in admitting persons to sue in *forma pauperis*.

Mr. *Puller*.—Suppose a man were worth 100,000*l.*, and swore he was not worth 5*l.* above his just debts, without stating the debts?

The *Lord Chancellor*.—If your client requires that statement, I will insist on the plaintiff's furnishing it by affidavit, in which he shall state the names of his creditors, and the sums due to them respectively.

In re Wrexworthy v. Wrexworthy, at Westminster, January 31st, 1838.

Equity Exchequer.

TITHES.—FRAUD.

An occupier of lands subject to tithes, removed his sheep from them to other lands, which he held tithe-free, and on which the sheep were shorn, and after five days from the time of removal, they were driven back. Held, in a bill by the rector of the parish where the sheep was driven from, that the removal was fraudulent, to deprive him of the tithe of wool, and an account for the same was decreed.

Mr. *Simpkinson* and Mr. *Parker* stated that the bill was filed by the rector of the parish of Houlton-cum-Bickering, in the county of Lincoln, against the defendant as occupier of lands in that parish, for an account of the tithes of wool, lambs, &c. The defendant occupied two farms, one in the parish of Houlton, and the other at Nettleham, the latter being nine miles distant from the former, and tithe-free. On the 20th of June, 1836, about 300 sheep belonging to the defendant, were driven from the farm at Houlton to that at Nettleham, where they were shorn on the 25th of the same month, and then they were driven back to Houlton. The plaintiff claimed the tithe of wool thus shorn, charging that the sheep had been fraudulently removed from the parish of Houlton, where they had been depastured, to Nettleham, for the purpose of depriving the plaintiff of the tithe of wool.

Mr. *Boteler* and Mr. *L. Wigram*, for the defendant, contended that there was an agreement between him and the plaintiff, whereby the plaintiff was entitled to take the tithe of agistment only, and consequently, that he had no right to the tithe of wool. They further contended, that the sheep were removed, not for the purpose of avoiding a claim, which in fact did not exist, but because the farm at Nettleham was more convenient for the purpose of sheep-shearing, on account of its proximity to the wool market at Lincoln, and also that it was drier and better adapted for the sheep at that period of the year. They asked for an issue to the facts.

Mr. Baron *Alderson*, said, it seemed to him he ought not to direct an issue, because if he was satisfied that the defendant removed the sheep, not *bond fide* and in the ordinary course of the management of his farms, but to deprive the plaintiff of the tithe of wool, it was a species of fraud sufficient to sustain the allegations of the bill. He was satisfied of that fact, the more, because the defendant by his witnesses, gave two accounts as reasons for the removal in question. One of the witnesses spoke to the circumstance of one farm being wet, and to the consequent necessity of removing the sheep in the due course of management of the farm. If this were true, the removal, it might be expected, would have taken place at the proper period of the year, and for a longer period of time than was merely necessary to drive the sheep to be shorn, and back again. The sheep were driven to Nettleham on the 20th of June, were shorn there, and were driven back on the 25th of the same month. The only reason that he could imagine for such a removal, was for the purpose of preventing the tithe of wool being paid. It was also stated, that Nettleham was more convenient for the shearing of the sheep, inasmuch as it was near Lincoln, the place where the wool would be sold; but would it not be more convenient to carry the wool nine miles than to drive 300 sheep nine miles backwards and forwards? Another circumstance to be taken into consideration was, that the sheep were not thus removed until disputes had arisen between the parties in respect of the tithe of wool. He thought on the whole, that the sheep were removed for the purpose of depriving the rector of his tithe, and he would decree an account of the tithe of the wool thus removed. He did not think that the alleged agreement to take the tithe of agistment had been made out.

Hall, clerk, v. Stevens, Sittings at Gray's Inn Hall, December 5th, 1837.

ACCOUNT OF TRUST ESTATE.

A party interested with others in a freehold estate, joined with them in a conveyance of the estate to trustees for sale, and became bankrupt. The trustees paid all the bankrupt's debts out of his share of the estate, and received a release for so much. They are still, after a lapse of several years, liable to account to the bankrupt for the general produce of the estate.

John Prebble and his two brothers Thomas and William, and their sister Letitia Farmer, being under a decree of the Court of Chancery, entitled as tenants in common to certain real estates, and being all anxious to dispose of part of them, had them conveyed to John Fenner and Joseph Prebble, in trust to sell and divide the produce amongst the parties entitled, according to their respective shares. Antecedent to the time, when the deeds of conveyance in trust were executed, John Prebble became bankrupt, and his assignees were made parties to the arrangement by deeds of lease

^a 11 Ves. 49.

and release, which were executed in 1819. By this arrangement, the trustees were bound to pay such part of John Prebble's share of the produce of the trust estates as would, in the first instance, satisfy his creditors in full, and to pay the residue to the bankrupt. He now filed this bill against the trustees, to compel them to give in a full account of all their dealings as trustees in respect of the trust property, and to account to the plaintiff for his share of the produce. The bill, after referring to various transactions that had taken place with respect to the sale of the estates, and after charging that no general account of the trust estates had ever been rendered, prayed for such account, &c.

Mr. Temple and Mr. Parker submitted that the plaintiff was entitled to the general account, as it would shew that a balance of his share was still due to him.

Mr. Simpson and Mr. Richards, for the defendants, said that the accounts had been furnished; that the plaintiff as well as the other *cestui que trusts* had an opportunity of investigating them, and that under these circumstances, it would be impossible for a court of equity, after a lapse of so many years, to re-open all these complicated accounts. In December 1821, the plaintiff had executed a deed of release, by which he admitted that up to that period he had been paid the full amount of his share of the produce money of the estate, with the exception of certain specified items, which had not been then settled. These related to the sale of some small portions of the estate.

Mr. Baron Alderson thought the general account up to the year 1821, quite clear and conclusive so far, but he considered that he ought to direct an account with respect to all dealings and transactions subsequent to that year, in order to see what sums of money had been actually received by the trustees, in respect of the trust property. The plaintiff was precluded by his deed of release from going into the account previous to the year 1821, but the defendants were not precluded from doing so, if they thought proper; of course, if they should open the general account, the plaintiff must have the benefit of his doing so also.—The costs must abide the issue of the enquiry before the Master. An order of reference to the Master was accordingly made.

Prebble v. Fenner, Sittings at Gray's Inn Hall, Dec. 6, 1837.

Queen's Bench.

[Before the Four Judges.]

EVIDENCE OF DEED.

If one deed recites part of a former deed, and an action of covenant is brought on the more recent deed, no more of the first deed is proved by the recital, than what has been there stated.

In such a case, if any other part of the first deed is necessary to be referred to, the first deed must be produced, and it cannot be

read in evidence, except after proper proof of its execution.

Where the second deed recites that the plaintiff was appointed a trustee, and had incurred certain liabilities as such trustee, the nature of those liabilities must be shewn by reading the first deed in evidence.

The Attorney-General moved for a rule to shew cause why a nonsuit entered in this case, should not be set aside, and a new trial granted, on the ground that there was sufficient evidence to go to the jury without proving the execution of a deed of 25th March, 1836. This was an action of covenant, on a deed given to indemnify the plaintiff against certain charges incurred by him as trustee of the Patent Cork Company. The deed on which the action was brought was dated 7th March, 1837, and recited a former deed, to which the parties to the second deed had likewise been parties, and which, according to the recital, stated the establishment of the company, and that the plaintiff had been appointed trustee of the same, and that the plaintiff had become desirous to withdraw from the liability as such trustee; and it was agreed that he should withdraw, and that the defendant should become trustee in his stead; and the plaintiff did accordingly withdraw, and the defendant gave him an indemnity in the following words: "That the defendant should and would, from time to time, and at all times, keep harmless and indemnify the plaintiff, his heirs and executors, from all actions, suits, costs, damages, and charges whatsoever, in anywise arising from the aforesaid instrument, or by reason or in consequence of the plaintiff having been such trustee as aforesaid." It is clear that the deed thus referred to might be read without calling the attesting witness. [Lord Denman, C.J.—I thought that the former deed was not incorporated in this deed of covenant; and that, in order to shew that the defendant was liable to indemnify, it was necessary to show how the plaintiff had become liable to damage under that deed. For that purpose, I held that it was necessary to prove that deed itself.] The existence and validity of the former deed was not put in issue, and both the parties to the latter were also parties to the former deed. That dispensed with the necessity of proving it. That deed must be considered as admitted by the recital. [Mr. Justice Coleridge—The recital would not admit more than was recited.] [Lord Denman, C. J.—And the second deed did not recite that part of the first on which this claim to indemnity was in substance founded.] But the deed itself was sufficiently referred to as a valid deed, and might, therefore, have been read without calling the subscribing witness. [Mr. Justice Coleridge.—In *Williams v. Silla*,^a and in *Watson v. King*,^b the rule acted on is, that so much of the deed as is stated in the declaration, when there is no plea of *non est factum*, is admitted, but no more. If you want

^a 2 Camp. 519.

^b 4 Camp. 172.

to prove more, you must, to prove the deed, call the subscribing witness.] That rule cannot be supported in principle. When it is found in one deed that, under a former deed, a person was a trustee, and that the more recent deed was made to indemnify him against the consequences of that trust, the word trustee has then acquired a meaning, and the reference to the first deed in the second is sufficient. The liability under the first may then be proved without calling the subscribing witness.

Mr. Justice Patteson.—A man must be appointed a trustee by a matter in writing. That writing ought to be shewn, for the purpose of proving the nature of the trust; and I think that the plaintiff could not read the deed without proof of its execution. I think it properly laid down in the cases which have been referred to, that the recital does not prove more than the matter actually recited. It does not prove the whole deed, which cannot be put in evidence without calling the subscribing witness.

Mr. Justice Williams.—Even supposing that the parties were trustees, that does not show how they were trustees, or what was the extent of the liability. That must be proved by the production of the deed itself, which could not be produced without proof of the execution.

Mr. Justice Colridge.—The precise issue here is, the character in which the plaintiff was liable. We know that he was liable as a trustee, but then certain trusts were created by the first deed; and we must look to see what they were, and how the plaintiff became liable upon them. The recital here is not sufficient to dispense with that proof.

Lord Denman, C. J.—The language of the pleadings was, that he was liable as such trustee as aforesaid. That shews that we must refer to another deed to see what that liability was. We could only obtain a true knowledge of the extent of that liability by a reference to the deed, and the deed could not be read until after it had been duly proved. I think, therefore, that unless we were prepared to overrule these two cases and the general understanding, we must refuse this application.

Rule refused.—*Gillet v. Abbott and another*, H. T., 1838. Q.B.F.J.

Common Pleas.

SIGNING JUDGMENT.

To an motion for trespass the defendant pleaded two pleas, on the first of which issue was joined, and to the second there was a replication. The defendant rejoined, confessing the cause of action on his second plea; and the plaintiff having demurred to this, the defendant gave him notice that he did not intend to proceed with this portion of his defence, on which the plaintiff signed judgment on the whole record. Held irregular.

R. V. Richards moved for a rule for setting aside interlocutory judgment signed in this

cause, on the ground of irregularity, with costs. It was an action of trespass, brought against the defendant for pulling up, taking and carrying away, and converting to his own use, two tomb stones, two grave stones, and two other stones, which were part and parcel of a monument, which it was alleged in the declaration had been placed over and above, and to the honour and sacred memory of certain ancestors of the plaintiff, who, before that time, had been laid in the grave; and whose remains, by the removal of the said tomb stones, grave stones, and other stones, had been much exposed.

The defendant pleaded first, that at the said time when &c., the said tomb stones, grave stones, and other stones, &c. were not, nor were any part of them, the property of the plaintiff, as alleged *modo et forma*; and of this he put himself upon the country; and for a further plea, that as to the pulling up, and taking and carrying away the said tomb stones, &c., the plaintiff ought not to sustain his action, because before and at the time, &c. the defendant was possessed of a certain close, to wit, the churchyard, to which the said tomb stones, &c. were affixed, and at the time, &c. they were doing damage to the defendant, and to the grass, herbage, &c., growing in the said close, and that therefore he took up the said stones, and conveyed them a short and convenient distance, and there left them for the said plaintiff. The plaintiff replied to the first plea, *similiter*, and to the second plea, that the said defendant converted and disposed of to his own use, the said tomb stones, &c. Rejoinder to the second replication, admitting that the defendant had converted and disposed of the said tomb stones, &c. to his own use, in manner and form, &c. To this rejoinder the plaintiff demurred, and the defendant, instead of joining in demurrer, gave notice to the plaintiff's attorney that he did not mean to take any proceedings in respect of the second plea; and the plaintiff, on this, signed judgment on the whole record, notwithstanding issue had been regularly joined on the first plea, which went to the whole declaration. It was submitted that the plaintiff was irregular in this proceeding, and that the case ought to have been treated just as if there had been judgment on the second plea; and that the issue which was joined, ought to have been left to be tried. Supposing a writ of error to have been brought, there was a perfect issue; and the defendant surely ought not to be worse off than if he had never pleaded the second plea. There was no analogy since the statute 4 Ann. c. 16, allowing double pleas, between this case, and one which might have arisen before that act. If there had been only one plea, and the party had refused to continue, judgment might have been signed; but here there were two pleas, the first of which went to the whole declaration: he was prepared to admit that the plaintiff was entitled to judgment on the second plea, but the first issue was a material one, and was undisposed of. The plaintiff should have put himself in the

same situation as if there had been joinder in demurrer, and judgment in his favour.

Peacock shewed cause in the first instance. The declaration was drawn on the authority of the case of *Spencer v. Brewster*, 3 Bing. Rep. 136, and it was submitted that the plaintiff was right in signing judgment. When pleading was carried on *videtur* in open Court, the parties originally appeared on the return of the writ, when if the plaintiff wished time, it was given to him; but if the plaintiff declared, the defendant came in; and if he confessed the action, judgment was given accordingly; but if the defendant did not appear, the plaintiff also had judgment.

Tindal, C. J.—You will have some difficulty in pointing out a declaration of that time, containing two counts.

Peacock.—The defendant here not having joined in demurrer, it amounted to a discontinuance or default, and the judgment was rightly signed, as the practice permitted it to be signed formerly if the defendant did not come in. Judgment given against a defendant for a default after plea pleaded, was a judgment by *nihil dicit*, for he should be considered to have waived all his former pleadings, and a writ of inquiry would have been awarded; so here the plaintiff could only sign judgment for the defendant's default. There was no issue here joined in law, and therefore the plaintiff could not take the opinion of the Court on the rejoinder. It was quite a new practice to put in a confession in the mode here adopted, and it was sought by this means to get rid of the expense of confession, and of the *retraxit* of the plea. *Tidd*, 559. There was no such judgment known in law as a judgment for want of a rejoinder. In *Petre v. Fitzroy*, 5 T. R. 152, it was held that if the defendant did not rejoin, the plaintiff might strike out the previous pleadings, and enter judgment as for want of a plea, and the neglect to rejoin was considered therefore an abandonment of the plea. This was derived from the old practice, where if the defendant omitted to go before the Court, judgment was signed as for want of a plea. It could not be contended that the plaintiff was not entitled to any judgment.

Tindal, C. J.—I am not prepared to say that, because you might have judgment of *nihil dicit quoad hoc*. The better course would have been to have applied to the Court for a rule for striking out the plea, because you certainly have signed a larger judgment than you were entitled to. The doctrine which you contend for is an old one, which existed long before the Statute of Anne, and it will hardly apply itself since that enactment. The proper course will be for the judgment to be set aside, but at the same time I think that the pleadings demurred to should be struck out; neither party paying costs.

Rule accordingly.—*Hitchcock v. Walter*, clerk, H. T. 1838. C. P.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

For Exchanging Lands in Common Fields.

Lord Ellenborough.

[This bill is in Committee.]

To make good certain Contracts of Banking and Trading Co-partnerships.

[This bill stands for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the better Administration of Justice at Quarter Sessions. 22d Feb.

Lord John Russell.

To provide for the access of Parents, living apart from each other, to Children of tender age.

Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[Leave has been given to introduce this Bill.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.

Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts. 14th Feb.

Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. 12th Feb.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

Banking and Trading Copartnerships.

[Passed.]

LAW OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases. The Attorney General.

[These bills stand for second reading on the 23d Feb.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements. Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland. Mr. Lynch.

[This and the previous bill stand for second reading on the 21st Feb.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal. Mr. Lynch.

[This bill stands for second reading the 28th Feb.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom. Lord Worsley.

[This bill is in Committee.]

To amend the 6 & 7 W. 3, for facilitating the Inclosure of Open and Arable Fields in England and Wales. Lord Worsley.

[This bill stands for second reading on the 7th March.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny. Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges. Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

To repeal so much of 39 & 40 G. 3, as authorizes magistrates to commit to gaols or houses of correction, persons who are apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime. Mr. Barneby.

[This bill has passed the House of Commons.]

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales." Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot. 15 Feb. Mr. Grote.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament. Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To regulate the times of Payment of Rates and Taxes by Parliamentary Electors, and to abolish the Stamp Duty on the Admission of Freemen. Lord John Russell.

[This bill is in Committee, and stands for 27th April.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament. Mr. Hume.

[This bill stands for second reading, 19th Feb.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament. Mr. Warburton.

[In Committee.]

To amend the Registration of Voters. The Attorney General.

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales. Mr. Hume.

[For second reading, Feb. 19.]

EDITOR'S LETTER BOX.

"T. N. D.," who states that "the publication of the questions asked at the different examinations, with references to the different authorities, as in the last edition of the *Articled Clerks' Manual*, has been of the greatest service to the younger members of the profession," is informed that his suggestion will be attended to as early as practicable.

"Embryo" cannot expect us to state, even if we knew, the private marks of approbation, or of doubt, used by the Examiners in the investigation of the answers of the candidates.

A correspondent "near Chelmsford" is informed, that persons who intend to act as *Conveyancers only* must, nevertheless, be examined in common law and equity, and be admitted as attorneys or solicitors, unless they are allowed to practise as Conveyancers under the Bar by the Benchers of one of the Inns of Court. In the latter case, no examination is instituted: the keeping twelve terms is deemed a sufficient proof of due knowledge of the laws of property and the practice of conveyancing.

We think "One of the last admitted" is entitled to commendation in endeavouring to employ his leisure in the manner proposed; but we cannot at present assist his object.

The request of a Correspondent at Rugby shall be complied with, and we are obliged by his suggestion.

The Letters of "Querist" and G. H., shall appear soon.

The letter of "Humilis" shall be considered.

The Legal Observer.

SATURDAY, FEBRUARY 24, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

ELECTION PETITION COMMITTEES.

We think it right to resume the consideration of the present mode of appointing committees on Election Petitions, to which we adverted last week. We then endeavoured to state what was the practice in such matters; and we gave it as our opinion that the decision of such committees was governed almost invariably by the political feeling of the majority of the members composing it. We cannot but think that this state of things must be deplored by disinterested and reflecting men of all parties. If a petition has no foundation, it should be held frivolous and vexatious; if it be founded on sufficient ground, it should be supported. This seems undeniable, but the mode of dealing with such petitions is not conformable to these rules; and although we are afraid that this is notorious, we shall enforce our observations by considering the result of the petitions presented in the present session, as we have had now three weeks' experience of the working of the existing system.

Petitions were presented against the returns for Roxburghshire, Ipswich, Salford, Canterbury, the county of Longford, Belfast, Petersfield, Bridgnorth, Sligo, Bristol, Honiton, Mary-le-bone, Lanarkshire, Tynemouth, and Youghal; and the days for which they were appointed to be taken into consideration, have all elapsed.

The petitions against the returns for Canterbury, Bridgnorth, Honiton, Lanarkshire, and Tynemouth, were abandoned by the petitioners, and no committees were therefore appointed to consider them, except in the last, as a matter of form. But in all the other cases it will be found that the decision of the committee, wherever it has

been made, has been according to the political feeling of the majority.

In the Roxburgh Committee the majority was ministerial, and the sitting member was of the same party. They have reported in his favour.

In the Salford Committee the majority was ministerial, and the sitting member was of the same party. They have reported in his favour.

In the Longford Committee the majority was ministerial, and the sitting members were of the same party. They have reported in their favour.

In the Petersfield Committee the majority was ministerial, and the sitting member was anti-ministerial. He was unseated, and the petitioner, ministerial, seated.

In the Sligo Committee the majority was ministerial, and the sitting member was of the same party. They have reported in his favour.

In the Bristol Committee the majority was ministerial, and the sitting member was of the same party. They have reported in his favour.

It must not be supposed that the anti-ministerials are a whit more impartial. They have not, as yet, had so much luck as their opponents; but wherever they have had the same power, they have used it precisely in the same manner.

Thus, in the Belfast Committee, the majority was anti-ministerial, the sitting members ministerial, and the unsuccessful candidates anti-ministerial. The sitting members have been unseated in favour of the unsuccessful candidates.

The Mary-le-Bone Committee was anti-ministerial; the sitting member ministerial. They have unseated him.

The only Committee, the decision of which has been doubtful, is the Ipswich Committee; and here it so happens that

there are six anti-ministerialists, and five ministerialists; and it is not so easy, therefore, to come to a decision. In the Young-hal petition, the Committee have not yet reported; but we have no expectations that they will set on a different rule from the others.

In the opinion of some, one fact is better than a thousand arguments; and we have thought it right to bring this statement before our readers, with the view of inquiring whether this mode of trying election petitions after the present session, should be continued. We shall from time to time review the general result of the existing petitions, and if we find any reason to change our opinion of their impartiality, we shall be happy to state it; but if not, we must call loudly on the Legislature to put an end to a system which is degrading to the honour and honesty of public men, and utterly subversive of the free representation of the people.

DAMAGES ON SEDUCTION.

It may be useful to notice the cases which relate to damages in cases of seduction.

Mr. Selwyn^a says, "From a laudable desire as I conceive to suppress the vice of seduction, against which our criminal code has not provided any punishment, many eminent Judges have thought it proper to direct juries, in ascertaining the amount of the damages in this action, to have regard, not merely to the injury sustained by the loss of service, a proper compensation for which might amount to a few pounds only, but also to the wounded feelings of the parent or party standing in *loco parentis*."

In *Southwood v. Ramsden*, Middlesex Sittings after H. T. 19th February, 1805, which was an action by a custom-house officer against a cow-keeper for the seduction of the plaintiff's daughter, *per quod servitium amisit*, Lord *Ellenborough*, C. J., said that further damages might be considered for the loss which the father sustained by being deprived of the society and comfort of his child, and by the dishonour which he receives. The jury gave 300*l.* damages.

In *Chambers v. Irwin*, at the Bristol Summer Assizes, 1800, Lord *Eldon*, C. J., expressed a similar opinion. The action was brought by an aunt for the seduction

of her niece, against the defendant, a lieutenant in the navy; and his Lordship told the jury, that in calculating the *quantum* of damages, they were not merely to look to the loss of service, but also to the wounded feelings of the party; and the jury gave 200*l.* damages.

So in the case of *Irwin v. Dearman*^b, where the plaintiff had declared against the defendant for the seduction of his adopted daughter and servant, and the jury had given 100*l.* damages, the Court refused to grant a new trial on the ground of excessive damages; and Lord *Ellenborough* observed that it was a case *sui generis*, where in estimating the damages, the parental feelings and the feelings of those who stood in *loco parentis* had always been taken into consideration; and although it was difficult to conceive upon what legal principles the damages could be extended *ultra* the injury arising from the loss of service, yet the practice was now inveterate, and could not be shaken.

This rule has been acted on in a recent case^c by *Tindal*, C. J., in which the action was brought against the defendant by the mother of the person seduced; and his Lordship said to the jury, "You are not confined to the consideration of the mere loss of service, but may give some damages for the distress and anxiety of mind which the mother has felt. If you find for the plaintiff, you will take into consideration the situation in life of the parties [both parties kept fruit stalls in the Borough market, Southwark], and say what you think under all the circumstances of the case is a reasonable compensation to be given to the mother." Verdict for the plaintiff, damages 50*l.*

THE LAW OF THE STAGE.

We have already adverted to the law of theatres and theatrical performances (3 L. O. 17.) We may here add a few other points which have arisen in a late case on the subject.

Point 1.—It seems clear on the authority of Mr. Alfred Bunn, Mr. Stephen Price, Mr. Charles Kemble, and Mr. Cooper, that in practice the lessee or proprietor of a theatre has the fixing of the times for be-

^a Selw. N. P. 1099, 5th edit.

^b 11 East. 23.

^c *Andrews v. Ashby*, 8 Car. & Pay. 7.

nefits; that the acting manager is entitled to an early day for his benefit; that he is not subject to the ordinary rules as to notice of an intention to take a benefit, which apply to the performers generally; and that the expense of a benefit was 150*l.* or 160*l.** Mr. Kemble said, the day is always appointed by the proprietor for the acting manager's benefit; but he would not let the good parts of the season go by without remonstrating, if his benefit was not fixed. "If I were lessee, having an acting manager, and he had not had a day early in the season, and gave no notice after the notice in the green room as to the general benefits, I think I should consider that he had waived his intention."

Point 2.—Although a private box, and the liberty of giving orders, are the usual privileges of an acting manager, yet they are only allowed in courtesy, and cannot be claimed as rights.

Point 3.—What a stage-manager says at the close of the season, is evidence, if it can be recollected. "A witness said he had some idea he was at the theatre, at the close of the season, when Mr. Wallack, the stage-manager, delivered the farewell address."

Wilde, Serjt.—What did he say.

Platt, objected.

Vaughan, J.—I think it is evidence; the value of it is another thing.

Witness.—"I have no recollection of what was said."

Point 4.—That the house being well attended, is no evidence of a good season.

"Wilde, Serjt.—The House being well attended, is *prima facie* evidence of its being a successful season.

Vaughan, J.—I think not."

Point 5.—What an acting manager may say of a piece. "I have heard him," said a witness of the acting manager, "make observations to many persons, but can only call a name to recollection in one instance. Miss Romer had been singing in Zampa, and when she came off he said to her, "I wonder how you can perform in such rubbish." Vaughan, J., in his summing up, seems to think he had a right to say this.

As our authority for all this important information, we beg to cite the case of *Lacy v. Osbaldiston*, recently reported by Messrs. Carrington & Payne, vol. 8, p. 80.

* The gross receipts of Mr. S. Knowles' benefit, appear, in a subsequent part of the report, to have been 260*l.*, so that to inferior men the "benefit" must be very questionable.

NOTICES OF NEW BOOKS.

Familiar Exercises between an Attorney and his Articled Clerk, on the general Principles of the Laws of Real Property: being the first Book of Coke upon Littleton, reduced to the form of Questions. To which are added, the original Text and Commentary; and an Appendix, containing some of the recent Real Property Acts of 3 & 4 Will. 4, with Interrogatories applicable to them. By Francis Hobler, jun., Attorney at Law. Second Edition. London: J. S. Hodson, 1838.

ALTHOUGH we noticed the first edition of this work, (Vol. 1, p. 298,) we deem it proper, at the distance now of nearly seven years, to direct the attention of such of our readers as are engaged in the study of the Laws of Real Property, to the second and improved edition which has just been published. It may not be necessary for every student of the law to make himself master of Coke upon Littleton, but all who have occasion to enter upon the study of that great authority, must be laid under obligation to Mr. Hobler, by these "Familiar Exercises." We think the questions are well devised for extracting the essence of the principal points in the Text, and perhaps there is no part of the Laws of England, wherein the method of study by question and answer may so fitly be applied, as in that of these celebrated "Institutes." At the present time also, the publication of such a work is peculiarly appropriate.

The following extracts from the advertisement to the second edition, will explain the additions which have been made since its predecessor.

"It is necessary to be remarked, that since the first publication, several acts of parliament have been passed, making an alteration in the practice of conveyancing, and also in some of the doctrines which had been laid down in the decisions of the several Courts of Equity and Common Law; but as the principles and theoretic part of the laws are very little, if at all, changed by such matters, the original construction of this work has been retained, and a portion of the statutes producing such alterations, and which are more immediately applicable to this little work, are introduced in an Appendix to the present volume; by which means the student will be enabled to refer and bring to his notice, the nature of the alterations which are created by these statutes, and the comparison will serve him

as an exercise, after he has made himself acquainted with the elementary principles.

"In the present edition, a few alterations are made in some of the original questions, and some additional questions are introduced in sections that would bear them, without encroaching on the student's researches."

Mr. Hobler, after noticing the new rules for the examination of persons applying for admission on the roll of attorneys and solicitors, remarks "that the articulated clerk must now study more than he was accustomed to do under the old system of things, and the present seeming a fit time for the reproduction of this little work, it is sincerely hoped that it may be of some use, however small, in facilitating the objects of the orders of the courts, in causing articulated clerks to bestow more time and attention in their researches into the principles on which the practice of their profession is founded; it is impossible to practise unless the theory be first understood, the reasons and grounds for things be examined into, and their general bearings and principles be fixed in the mind by attentive research. Lord Coke, in his legal enthusiasm, calls the science of law '*the perfection of reason*,' and true it is that many things, and many decisions, which, at first sight, may appear to the student to be strange or contradictory, if steadily traced to their origin, will be found to be based on correct principles: but this tracing and searching after the grounds of decisions, though very necessary to be done, and attended with much labour and anxiety, yet it reminds one of another of Lord Coke's remarks, that the law is like a deep well, out of which every one draweth according to the strength of his understanding."

NEW BILLS IN PARLIAMENT.

FINSBURY SMALL DEBTS.

This is intituled "A bill for the more easy and speedy recovery of small debts within the borough of Finsbury." It recites—

That the borough of Finsbury in the county of Middlesex, is a place of very large population and great trade and traffic, wherein numerous small debts, below the consideration of her Majesty's Courts at Westminster, are contracted, which in the whole nevertheless amount yearly to a very considerable sum; and the persons to whom the same are due from time to time are deterred from seeking to recover such debts by course of law on account of the disproportionate expence of suit;

And that it would greatly benefit the in-

habitants within the said borough, and would tend to the support and protection of trade and useful credit there, if a more easy, cheap, and speedy means of recovering small debts were provided; but the same can only be effected by the authority of parliament.

The following is the substance of the proposed enactments. Those relating to the jurisdiction of the Court are stated fully:—

Lists or Rolls of names of Commissioners.

Disqualification.

Administering oath. Books. First meeting. Commissioners to be quasi corporate as "the Commissioners of the Finsbury Court of Requests."

Lists of Commissioners to be made and hung up.

Public business in relation to the constitution of the body of commissioners in their corporate capacity to be transacted by and at general meetings.

General meeting.

Special general meetings for purposes of regulating the business of courts, officers, &c.

Chairman to be elected.

Commissioners or a competent number to make a court.

Special appointment of the first chief clerk, G. A. Macphael.

Salary of chief clerk, 500*l*.

General power to appoint clerks and officers, during good behaviour and pleasure of majority of commissioners. Officers' dismissal, &c.

Providing office, &c. and office hours.

Judicial meetings or courts.

Number of commissioners required to form court.

When sufficient number of commissioners are not present, court shall be adjourned as of course.

Seal of court.

Clerk to draw names of commissioners for rotation of duty.

Commissioners may sit as such whenever they think fit.

For maintaining the efficiency of the court and the respect due, and preventing insults.

Names of commissioners misbehaving or rendering themselves obnoxious to be expunged.

Regulating hours for sitting of court.

Subject matter of *Jurisdiction of the Court*.

And be it enacted, that the said commissioners may and they are hereby empowered and required at their said courts to hear and determine in manner herein provided, all disputes and matters in difference between parties duly suing and sued before them in respect of any sum of money or other subject-matter of suit or action not exceeding in amount or value the sum of *ten pounds*, and except as hereinafter mentioned the said commissioners are hereby given cognizance and jurisdiction in all demands and actions of debt on simple contract, and actions upon promises and in cases of alleged trover and conversion, and of detinue of or damage done to goods and chat-

tels where the entire claim or demand of the suitor does not or did not originally (except also as hereinafter mentioned and provided) amount to the sum of ten pounds, provided that such jurisdiction or cognizance of causes of suit or action shall not extend to any subject matter which shall or may either directly or indirectly involve any other question or affect any other issue than the simple matter of demand or bring into question or tend to determine or bind any collateral right or interest or any liability or eligibility: provided always nevertheless, that any such objection to the jurisdiction of the said commissioners in their said court shall be taken and made before the court before or at the commencement of the hearing of the cause, or the party who might or could have objected thereto shall be incapable afterwards of taking any advantage of such objection.

And be it enacted, that all attorneys or solicitors or any other officers of any court of law or equity at Westminster, or of any other court whatsoever, who by reason of privilege would otherwise be exempt from the jurisdiction of inferior courts, shall notwithstanding such privilege be liable to be sued in and be subject to the processes orders judgments and executions of the said court of requests in the same manner as other persons are by this act made subject thereto, in all cases in which they shall come within the jurisdiction of the said court in other respects.

And be it further enacted, that no attorney or solicitor nor scrivener nor any person practising the law shall be permitted to appear and be present or speak in the said court as attorney solicitor or advocate, for or on the part of or against any party plaintiff or defendant or any other person in any cause action or matter in which such attorney solicitor scrivener or person practising the law is not himself a party or witness.

And be it enacted, that nothing herein contained shall extend or be construed to extend so as to enable any plaintiff to split or divide any cause of action for recovery of any debt or demand where the whole sum that shall appear to be due and owing shall amount to more than *ten pounds*, in order that the same may be made the ground of two or more actions, causes, or matters in controversy for the purpose of bringing such actions causes or matters within the jurisdiction of the said court; and in case it shall appear to the said commissioners that any plaintiff shall have so split or divided his cause of action, debt or demand as aforesaid, except to bring it within the power hereinafter contained, then and in every such case the said commissioners shall and they are hereby required to dismiss with costs every such action cause or matter so split or divided, but such dismissal shall not hinder or prevent such plaintiff from proceeding for the recovery of his debt in any of her Majesty's courts of record at Westminster or in such other manner as he or she might have lawfully proceeded if this act had not been passed: provided nevertheless, that in case

any plaintiff who shall have so split or divided such his cause or action debt or demand as aforesaid, or to whom the whole sum that shall appear to be due shall exceed the sum of ten pounds, shall declare to the commissioners that he is willing to accept such sum of money as the said court is and by this act enabled to adjudge and order to be paid in full of the whole of such debt or demand in such action or cause, then and in every such case the said commissioners shall and may on such plaintiff adducing proof respecting his debt or demand to the satisfaction of the said commissioners adjudge decree and order such sum to the plaintiff not exceeding ten pounds as to the said commissioners shall seem just and reasonable; and such sum shall in the order judgment or decree to be given by the said commissioners be declared to be and shall be in full discharge of all demands from the defendant to the plaintiff in such action cause or matter in controversy, and the plaintiff shall be precluded from afterwards proceeding in any other court for or on account of such debt.

And be it enacted, that it shall be lawful for any person whether such person shall or shall not reside within the said borough of Finsbury, or the jurisdiction of the said court or whether he be of full age or not or although he be the personal representative of another who now has or hereafter shall have any debt due and owing to him or any demand upon promises or under any contract or agreement or for goods or chattels sold and delivered, or found and converted and detained or damaged for which debt or demand thing or damage he shall claim any sum of money from any person whomsoever residing or inhabiting within the borough of Finsbury, or keeping or using any house warehouse wharf quay counting-house chambers lodgings office shop shed stall or stand, or employed working or seeking a livelihood or trading or dealing within the said borough of Finsbury, to apply to the clerk of the said court for the time being or his assistants at the office of the said court who shall make out and deliver to the serjeant or one of the beadles or officers of the said court for the time being, a summons in writing or in print or partly in writing and partly in print, directed to such debtor or defendant expressing the sum demanded of him the nature of the demand with the name of the party demanding the same, and requiring such debtor or defendant to appear at a certain time and place to be mentioned in such summons before the commissioners of the said court to answer such demand; and such servant, beadle, or officer, shall in due course serve or cause such summons to be served on such debtor or defendant either personally or by leaving the same at his residence with some member of his family or his servant or other person belonging to him there, or the master or mistress of the house at the dwelling-house where the defendant shall lodge or at the wharf quay warehouse counting-house chamber office shop shed stall stand or other place of dealing trading or working or resort of such debtor, being within the

jurisdiction of the said court, two clear days at least previous to and exclusive of the day appointed in the said summons for the hearing thereof: provided that where any debt shall be due owing or demanded from any two or more persons jointly the like service of any such summons as aforesaid on or for any one of such two or more joint debtors shall be as good and sufficient in law as if each of them were separately summoned.

Clerks not to issue summons till deposit be made by plaintiff. Costs to defendant. Surplus to be returned to plaintiff.

Commissioners empowered to subpoena and compel the attendance and testimony of witnesses and production of documents. Commitment for not paying penalty. Compelling production of documents, &c.

Power to administer oaths to parties witnesses, &c. Perjury in courts punishable as such as in other cases.

Commissioners empowered to hear and determine suits on appearance of parties.

Set off. The statute of limitations. Discharge by bankruptcy and certificate or by court for relief of Insolvent Debtors may be pleaded. Proviso that notice be given to make such defences admissible at the hearing.

In absence of parties or witnesses, &c., court may adjourn till some other fixed day. Proviso preventing the removal of causes and proceedings by *certiorari*.

Provision for proceeding *ex parte*, in case of non-appearance of debtor.

In case of the debtor being unable from illness to pay the debt, the court may suspend or supersede the proceedings.

Court may award execution against goods.

Regulating the sale of goods taken in execution.

Costs of distress.

Execution against body after execution against goods.

Further execution when secreting or removing goods or person. Court may order payment by instalments.

Process not to issue against the body and goods of the same person at the same time.

If defendants remove out of the jurisdiction of the court to avoid execution, a justice of the peace may endorse the precept, &c.

Proceeding in case of non-appearance of plaintiff or he be nonsuited or have judgment given against him.

Clerk to insert or endorse debt and costs on precepts and if paid the clerk of court before sale, execution to be superseded.

Limitation of the time of imprisonment of debtors.

If any debtor conceal money or goods the time of his imprisonment shall be extended to not exceeding thirty days further.

Persons taken into custody for more than one execution to be imprisoned the limited time for the first execution and afterwards the limited time on each subsequent execution.

Penalty on keeper of prison neglecting his duty.

Penalty on beadle or other officer neglecting his duty.

Fees to be taken.

Officers taking any fee besides the fees allowed, to be discharged and forfeit 10*l*.

Books of judicial proceedings, &c. to be kept for entries as of record.

Clerk to account quarterly.

Power to invest money received.

List to be made out of unclaimed suitors' money.

Suitors' money to be paid over to treasurer.

Suitors' monies to be invested.

Provision as to sale of stock to answer claims of suitors.

Appointment of new trustees in case of death, &c.

Suitors' monies to be irreclaimable after a certain period.

Offices of clerk and treasurer not to be held by the same person.

No commissioner to be concerned in the supply of any articles for the use of the court on penalty of 50*l*.

Raising fund for defraying costs and expenses of the act.

Recovering and applying fines, &c.

Actions and suits may be in the name of the chief clerk or one of the commissioners.

Plaintiff not to recover without notice or after tender of amends.

Notice and limitation of actions and tender of amends. General issue.

Provided always and be it enacted, that if any action or suit for any cause of action not exceeding *five pounds* shall be brought or prosecuted in either of her Majesty's courts of record at Westminster, and it shall be made to appear to the judge who shall try the same or to any judge of the said courts of record during any stage of the proceedings on the shewing of the defendant by suggestion or otherwise that the defendant might have been sued and the plaintiff might have recovered the debt or demand in the said court of requests, the said judge shall in the first case disallow to the plaintiff all costs of such suit or action so tried in the superior court and award that the plaintiff shall pay to the defendant all the costs which such defendant shall have respectively and actually been put unto by reason of the said suit or action, and in and about the defence thereto to be proved to the satisfaction of such judge or the proper officer of the same court of record to whom it may be referred; and in the second case it shall be lawful for any judge of the said courts to order that the proceedings shall be stayed and to make the same award as to the costs of the cause already incurred.

Saving the jurisdiction of the hundred of Ossulton.

Interpretation clause.

Public act.

ON ADMISSIONS IN THE PALATINE COURTS WITHOUT EXAMINATION.

To the Editor of the Legal Observer.

Sir,

THE examination which a person seeking to enter the profession has now to undergo prior to his admission as an attorney or solicitor in the Courts of Law or of Chancery, being instituted by the Judges for the purpose of ensuring as much as possible the fitness and good qualifications of the applicant, I beg to call your attention, and also the attention of those to whom the honour and integrity of the profession are a subject of interest and concern, to certain facts which have been for some time, and still are, in a very serious manner tending to bring it into contempt.

I allude to the practice which now prevails amongst the Judges on the Northern Circuit, of taking the certificate of the attorney, upon the application of a person for admission into the Palatine Courts, of the due service of his articles of clerkship, and his general fitness and capacity to act as an attorney; which certificate is generally signed by the Master and received by the Judge, as sufficient, who thereupon grants a fiat, and the applicant is admitted accordingly, without any personal examination.

The fiat so granted enables the person by whom it is obtained to practise in the Palatine Courts, and also, through the medium of his London agent, in the Courts above; and the facility with which it is obtained, and the advantages so gained, looking in a pecuniary view, are beginning to be so sorely felt by those who pass their legal examination in the regular way under the New Rules, as loudly to call for some effectual check.

But, Sir, the hardships to which the profession are thus exposed, are not my only reasons for presuming to address you:—for the facilities which I have above pointed out, coupled with the small amount of stamp duty payable on articles in the Palatine Courts, have been the means of introducing into the profession an infinite number of persons utterly disqualified for the practice of a noble science, both as respects their education and standing in society; and who are thereby silently and as it were by stealth admitted into the law, and provided, in many instances, with the means of annoyance to the community, and of perverting the law to purposes of injustice.

The practice above stated, formerly, I believe, prevailed in the Superior Courts, but the mischiefs arising therefrom having, in many instances, come to the knowledge of the Judges, it was deemed necessary, for guarding against the admission of the vicious and ignorant, and for the purpose of maintaining as far as possible the integrity and talent of the profession, to institute those excellent and salutary rules which have formed the basis from which boundless good may in due time be expected.

To remedy the hardships and evils above

complained of, you will, Sir, I feel persuaded, see the necessity of some speedy preventive to insure to the profession in the Palatine Courts that talent and probity which a highly honourable and useful science demand; to effect which, I beg, with all due deference, to submit the necessity of extending the rules for examination to all the Courts of Law and Equity in England, and also of framing a rule to the effect that no person be allowed to practise as an attorney or solicitor without having duly obtained a certificate of "fitness and capacity," &c. from the Examiners in London.

The new Examination Rules have, I am fully persuaded, (for "experientia docet,") so far worked a salutary good; and if something as above proposed were done to remedy the hardships at present existing in the Palatine Courts, it would materially assist to reform the abuses which are at present so apparent. B.

WILL OF THE LATE EARL OF ELDON.

THE will of the late Earl of Eldon was proved in the Prerogative Court of Canterbury on the 16th instant, by the three executors—namely, the present Earl of Eldon, Mr. Cross, one of the Masters in Chancery, and Mr. Alfred Bell. It occupies seventy-four sheets closely written, and there are seven codicils (one of which is holograph). The will is dated the 24th June, 1836; the codicils bear date in 1837; the last is dated Dec. 21st, 1837, less than a month before the Earl died. The property is sworn under 700,000*l*. The bulk of the will is occupied with very careful devises of real property in the counties of Dorset and Durham, trusts, limitations, &c.

The principal devisee is Lord Encombe (the present Earl), the testator's grandson, for life; then to his son; and in default of children, the property is left, under various conditions and limitations, to the daughters of the late Earl, Lady Frances Jane Bankes, and Lady Elizabeth Repton, and their families. The family of the latter takes a less extensive benefit than that of the former, the reason of which the testator declares is, that Lady Frances Bankes has a larger family, and may expect to have more children, whereas Lady Elizabeth Repton has but one son, and is not likely to have more issue. The trustees of the property are Master Cross and Mr. Alfred Bell.

There are various small legacies, and amongst others the late Earl's coach-horses are bequeathed to Lady Frances Bankes; with a direction that they are to have a free run of the grass at Encombe. The Earl also bequeathes his favourite dog, "Pincher," to the same lady, with an annual allowance of 8*l*. to buy him food. At the end of the will is a schedule of various articles, such as portraits, watches, his Chancellor's robes, Peer's robes, presents made to the Earl from public bodies, and the like, which are bequeathed to different individuals. The codicils contain alterations

and modifications of the devices in the will, except the holograph, dated in September last, which gives a legacy to one of the Earl's servants, whose character and services it eulogises. This instrument is written on a sheet of note paper, in a tremulous hand. All the instruments are sealed with the Earl's coat of arms on black wax.

SELECTIONS FROM CORRESPONDENCE.

CORONERS' INQUESTS.—MEDICAL WITNESSES.

To the Editor of the Legal Observer.

Sir,

PERCEIVING that considerable notice has been taken in your useful journal of the recent laws affecting coroners, and as the interest of the medical profession are in some degree involved therein, possibly the following remarks may not prove unacceptable. By the 6 & 7 W. 4, c. 89, provision is made for the remuneration of medical witnesses attending coroners' inquests; and the witness so summoned by the coroner is empowered to demand from that officer an order on the churchwardens and overseers of the parish in which the inquest was held, for certain fees fixed by the act. The 1 Vict. c. 68, repeals the 6 & 7 W. 4, c. 89, so far as regards the making out of the order by the coroner upon the churchwardens and overseers for payment of the fees of the medical witness attending the inquest, and the coroner is required to pay the same at once out of his own pocket, looking afterwards for the repayment thereof out of the borough funds or county rates. Now suppose, shortly after the passing of the former act, a medical gentleman to have been summoned by the coroner to attend, and thereupon he attended an inquest—that an order was given to him by the coroner upon the overseers of the parish wherein the inquest was held for payment of his fees—that the same was produced to the overseers and the money demanded—that no notice was taken of such demand by the overseers—that a subsequent and recent demand was made, and the money refused. In what condition then is the medical witness as regards the recovery of his fees? It is plain that this (former) act authorizes the claim, yet it does not provide any means of enforcing it. The latter act (1 Vict. c. 68) does not seem to me in any way to remedy the matter, but perhaps the reverse. This latter act has no *ex post facto* operation, so as to render the coroner liable in the case which I have put, nor does it supply the former act with a special, or indeed, any mode of enforcing the claim, or confirm the obligation upon the parish, strictly liable, (heretofore or at present,) or charge the corporate fund or county rates with the payment thereof; so that it seems to me (unless the common law provides a remedy,) the object of the framers of the former act has signally failed, and that

the medical witness has given his labour and attendance under a delusive expectation of remuneration. Perhaps some of your intelligent correspondents will look into this subject, and correct my construction of the law thereon, if found to be erroneous.

QUERIST.

JUDGE'S POWER TO STAY PROCEEDINGS ON TERM.

Sir,

In the instance put by your correspondent at p. 278, and presuming on the defendant's really wishing to pay, but inability to do so immediately, it was hard to refuse an order for staying proceedings. But as a general principle, I think it is very properly left with the plaintiff to refuse or assent to such an order as he may think fit. If a defendant is obstinate and will not pay, but compels the plaintiff to sue him, the plaintiff ought to have the benefit of this proceeding, and not be hung up by a Judge's order to stay, merely because by proceeding, he could not sooner obtain judgment and execution. This would be a vexatious step on the defendant's part, and probably induced by malice, as it deprives the plaintiff of the beneficial result produced on the defendant by the costs continuing to increase so long as he remains obstinate, which not unfrequently induces the defendant to pay the debt and costs much sooner than under a judgment.

I recollect a letter in your Journal, some time ago, complaining, but I think in ignorance of the power to oppose, of the defendant being able to compel the plaintiff to accept such terms, thus avoiding what would otherwise induce a more speedy payment,—additional costs.

G. H.

DOWER.

Sir,

Doubts having arisen among conveyancers, whether a married woman, and who was such on the 1st January, 1834, is entitled to dower under a conveyance made to the husband subsequent to that time expressly in bar of dower, under the provision of the late act 3 & 4 W. 4, c. 74, and the wives of such subsequent purchasers having been required to join in the conveyance to the purchasers, and to acknowledge the deed in the manner directed by that act, although the purchase deed contains an express declaration that they shall not be entitled to dower,—I deem it right to draw the attention of the profession to the subject, that if needful, an act may pass to remedy such an evil. The idea that the act was only intended to apply to women married since 1st January, 1834, seems absurd.

M. M.

PERPETUAL COMMISSIONERSHIPS.

Sir,

I was glad to find an article on this subject in your publication of the 17th inst. It really

is surprising that the perpetual commissioner-ships should have been hitherto made such a source of monopoly. The greatest injustice is done to the profession at large in consequence, and your correspondent rightly states that much inconvenience is sustained—the more especially in small places, by the thin sprinkling of this fortunate class of individuals.

Why, allow me to ask, should not a gentleman who has passed the ordeal of an examination, and thereby, to say the least of it, established a character for legal ability, be considered incapable of exercising the easy duties of a perpetual commissioner? for, recollect, that under the old law, any one might be a commissioner for taking a fine, and surely there is no greater talent required now than there was then.

I see not the slightest reason for withholding the appointment from any one who has been admitted, although in my opinion, there is great injustice in refusing it. And I think, that if the Lord Chief Justice of the Common Pleas had any notion of the expence and delay frequently occasioned, either by the absence of a commissioner from home, or by the great distance he has to travel, he would scarcely refuse to remedy the inconvenience, by putting us all upon an equal footing in this respect.

L.

SUPERIOR COURTS.

LORD CHANCELLOR'S COURT.

PLEADING.—BILL OF AN ADULT BY NEXT FRIEND.

A single woman, of the age of twenty-one, not found by commission to be of unsound mind, but appearing to the Court to be of weak mind, and incapable of taking care of her property, may file a bill by her next friend, for putting her under the protection of the Court; and the Court will exercise its jurisdiction, and refer to the master to appoint guardians.

Miss W. was entitled, under her grandfather's will, to a legacy of 5000*l.*, on attaining her age of twenty-one. She had just attained that age, and her father, with whom she had hitherto resided, sued out a commission of lunacy against her. Mr. G., a friend, obtained leave from the Court to defend Miss W. against the commission. The result was, that the father abandoned the commission; but it being made to appear that the young lady, though not a fit object of a commission of lunacy, was yet of weak understanding, and incapable of taking care of her property, the Lord Chancellor approved of a suggestion that the proper course for the protection of the young lady, would be to file a bill on her behalf, under which guardians might be appointed. A bill was accordingly filed in her name, by Mr. G., as her next friend, against the executors of her grandfather's will, and

others; and a petition was presented in her name by the said Mr. G., entitled in the cause, and praying an order of reference to the master to approve of fit persons to be protectors and guardians of the young lady, and of her estate, &c.

Mr. Craig, on behalf of the executors, opposed the petition, founding his objection thereto on the form of the bill and petition. The bill commenced, "humbly complaining, &c. your oratrix, who, though she hath obtained her full age, yet, by reason of certain disabilities, &c. by F. G., her next friend, &c." There was no precedent for such a bill by an adult, not found of unsound mind, except one mentioned in a note to Lord Redesdale's book on Pleading, p. 30, "*Eli Liney*, a person deaf and dumb, by her next friend, against *Witherby and others*." He appeared for the defendants, the executors, against whom the bill prayed that they pay money into Court.

Mr. Anderdon, in support of the petition, said the bill was framed on the doctrine laid down by Lord Eldon, in the cases of *Ridgeway v. Durwin*,^a and *Sherwood v. Sanderson*.^b He also cited Lord Donegal's case.^c The objection should be by demurrer or motion to take the bill off the file, and not by interlocutory application.

The Lord Chancellor.—You pray for actual payment of money by the executors into Court. If you do not press that part of the prayer, I do not see what right the executors have to appear to the petition.

Mr. Anderdon.—We do not press that part of the prayer, and we gave the executors notice that we do not, and that they need not appear.

The Lord Chancellor.—Then the executors have nothing to do with the other part of the petition, the prayer to pay the money into Court being withdrawn. I must, in this matter, proceed in analogy with the case of an infant; and refer it to the master to appoint fit persons to be guardians of this lady.

Mr. Walker, for the father of the lady, had no objection to that order, provided that in the execution of it, the connection between parent and child should be attended to. The father, not being in any way impeached, ought to be the guardian.

The Lord Chancellor.—I make the usual order as in the case of an infant. There is no objection to the father's going before the master. If any difficulty should occur before the master, application can be made to the Court. The master will settle a scheme for the support of the plaintiff, and will report the amount of her property, and what sum will be necessary, and out of what fund, &c. and also who will be admitted to see her.

Wilkinson v. Harwood and others, at Westminster, January 15th, 1838.

^a 8 Ves. 65.

^b 19 Ves. 280.

^c 2 Ves. sen. 408.

CONSENT OF CREDITORS BY THEIR AGENTS.

The consent of the authorized agents of the major part in value of creditors, who have proved their debts under the commission, is sufficient authority for the assignees of the bankrupt to institute a suit.

This was a suit instituted by the creditors' assignee, and the official assignee of a bankrupt, against a debtor to the estate. The creditors' assignee, and the greater part of the creditors, resided in Scotland: the consent to the suit was given at a meeting, not of the major part in value of the creditors themselves, but of their proxies, under powers of attorney.

Mr. J. Russell moved, on behalf of the official assignee, that the other assignee and the creditors be ordered to give him security for the costs of the suit. It was an established rule, that if an assignee commenced a suit in equity, in respect of the bankrupt's estate, and failed therein, he would have to pay the costs out of his own pocket, unless he had the consent of the major part in value of the creditors, who had proved their debts under the commission, at a meeting duly convened. The whole question in the present case turned upon the construction of the 88th section of the Bankrupt Act, 6 G. 4, c. 16; and it was, whether the consent which was given to this suit by the proxies of the creditors, was equivalent to a consent by the creditors themselves. The debts proved against the estate exceeded 160,000*l.* A meeting of the creditors was called:—a great number of them residing in Scotland, did not attend, but their agents did, and the debts proved by the creditors who attended, and by those whose proxies attended, exceeded 100,000*l.* The creditors who were present were more than one third; but not near the major part in value of all the creditors who proved. He submitted that the consent given to the suit at that meeting, was not a compliance with the above-mentioned section of the act, so as to sanction the institution of the suit. The creditors could not delegate to their agents the powers of hearing, reasoning, and deliberating required for such a meeting. The corporal presence of the creditors to deliberate and resolve, was required by the true construction of the act, as what was done at such a meeting was binding on the estate.

Mr. G. Richards opposed the motion.—The choice of assignees of the bankrupt's estate, required as much discretion and deliberation, as the giving consent to a suit; and yet by the 61st section, the agents of creditors having letters of attorney from them, were held authorized to vote in the choice of assignees. So again, by the 102 section, where the words were exactly as in the 88th section, "at the meeting of creditors for the choice of assignees, the major part in value of such creditors there present, may direct how, &c." The direction there required might be given by a meeting of the agents of the creditors, under powers of attorney. The 133d section bore the like construction; and under it nine-tenths in number and value of creditors present by their depu-

ties, might accept a composition. By the 135th section, the act is to be construed beneficially for creditors. If the actual presence of creditors was indispensable, in very few bankruptcies could any meeting be held of creditors to satisfy such a construction. By the 122d section, the bankrupt's certificate "shall be signed by four-fifths in number and value of the creditors, &c."; but the signatures of their agents have been deemed sufficient. But upon this very point now raised, there is a decided case. *Ex parte Llewellyn, in re Williams, 1 Deacon.*

Mr. Russell, in reply.—The power to sign the certificate by authorised agents of creditors was expressly given by the 124th section; so also the power to accept composition by the nine-tenths of the creditors under the 133rd section, could not be exercised by their agents, if they were not expressly authorised by the 134th section. Neither the 88th, nor any other section of the act, authorised consent to a suit to be given by the agents of the creditors, but they should be personally present at such meeting.

The Lord Chancellor said, he would take time to examine the different sections of the act 6 G. 4, c. 16, that were referred to. On a subsequent day, his Lordship delivered his judgment, and said it would be impossible in many cases, to comply with the 88th section if it were to be construed as requiring the actual presence of the creditors. This was the first time the question was raised. There were other sections of the statute, as the 61st, by which the act to be done was by the creditors present at the meeting: yet the meeting under that section might be composed of the authorised agents of the creditors. By analogy with the construction put upon that section, and upon other sections of the act which were referred to in the argument, he was of opinion that the consent of the major part in value of the creditors present at the meeting by their regularly authorised agents, was sufficient consent of the creditors for the institution of this suit.

Bannantye and Fletcher v. Leader, M. P., at Westminster, January 24th and 27th, 1833.

Equity Exchequer.

EQUITABLE MORTGAGE.—DECREE FOR SALE.

On a bill by an equitable mortgagee, praying an immediate sale, the Court will make a decree for sale of the estate, giving the mortgagor or his representatives, six months to redeem the title deeds.

This was a bill filed on behalf of the directors of the Northern and Central Bank of England, against the devisees in trust, the executors and parties beneficially interested under the will of one James Gartaide; and it prayed that certain of his real estates might stand charged as a security for the payment of a debt which the testator owed to the company; and that an account might be taken of what was due to them for principal, interest,

and costs, and that what should be found due might he paid to them; or that the property might he sold, and the amount found due paid out of the proceeds; and that in the event of a sale, the defendants and all proper parties, might be ordered to join in a conveyance, &c.; and that in the meantime a receiver should be appointed, and the defendants restrained from receiving the rents, &c. It appeared that the testator kept an account with the said bank, and various advances of money were made to him, as a security for the repayment of which he lodged with them title deeds of his property, at the same time entering into written agreements to execute mortgage deeds, if so required, but none were executed. In January 1836, when he died, the balance owing by him to the company was stated to be 2,484*l.* 11*s.* 6*d.*, to obtain payment of which, this bill was filed. The amount was not disputed.

Mr. *Simpkinson* and Mr. *Bacon* appeared for the plaintiffs, Mr. *G. Richards* and Mr. *Mylne* for some of the defendants, and Mr. *Burgess* for others.

His Lordship directed an account to be taken by the Master of what was due to the plaintiffs for principal, interest, and costs; and that a sale should take place of the real estates, as in *Parker v. Housefield*,^a at the expiration of six months from the date of the report; and that the defendants should be paid their costs out of the surplus fund, if any remained after payment of the debt, with liberty to the defendants, within the six months, to redeem the title deeds.

Thorpe v. Gerteide and others, Sittings at Gray's Inn Hall, December 11th, 1837.

Queen's Bench.

[Before the Four Judges.]

AFFILIATION ORDER.—CLERICAL MISTAKE.

Two magistrates, after hearing a charge against a man, that he was the father of a bastard child, and his defence thereto, declared him to be the putative father; and as such ordered that he should pay a certain sum of money for the past expences of the maintenance, and a certain weekly sum for its future support. By the mistake of the clerk who reduced this order to writing, and then made two copies of it, one of the copies contained the name of the mother, instead of that of the father, as the person who was to pay the weekly sum for the support of the child. The mistake having been discovered, a correct copy of the order was served on the father, who on refusing to pay, was committed to prison. Held, that the committing magistrate having this correct copy of the order before him, was not bound to enter into the history of the first mistake, but was justified in making the committal on the order produced to him;

and that what was said at the time of making the order,—not what the clerk by mistake wrote down,—was to be considered as the order; and especially if what he wrote was in direct opposition to the order pronounced by the justices on the hearing, and in the presence of the parties.

This was an action of trespass and false imprisonment; plea, Not Guilty. At the trial before *Parke, B.*, at the Norfolk Spring Assizes, 1835, a special verdict was found, setting forth the following facts. The defendant is a magistrate for that county, and had caused the plaintiff to be imprisoned in the Norwich Castle, for non-payment of the sum of 5*l.* 3*s.* 6*d.* being the arrears of sixty-nine weekly payments, alleged to be due from him to the parish of New Buckenham, Norfolk, under a certain order of affiliation, which, the plaintiff contended, was invalid and a nullity. As to this order, it appeared that on the 5th November, 1829, the plaintiff was summoned before John Wright, Esq. and Sir Robert Buxton, two justices of the peace for the county of Norfolk, on a summons issued by them to shew cause why he should not be adjudged to be the putative father of a bastard child, theretofore born in the parish of New Buckenham, of the body of one Sarah Aldis. After hearing the parties, the two justices "made, signed, and sealed, two paper writings," set out at length in the special verdict. By each of them the plaintiff was adjudged to be the putative father of the bastard; and by each of them he was ordered to pay to the churchwardens and overseers of New Buckenham, the sum of 15*s.* towards the lying in of the mother, and the maintenance of the child to the time of the making the order; and the further sum of 1*l.* 6*s.* 6*d.* for the costs of the order, and other incidental expences. By each of them also, the mother was ordered to pay to the parish officers "the sum of 1*s.* per week, so long as the child shall be chargeable to the parish, in case she shall not nurse and take care of the child herself." So far the two "paper-writings" agreed. By one of these, however, the plaintiff, by name, was ordered to pay to the parish officers, "the sum of 1*s.* 6*d.*, weekly, from the present time, for and towards the maintenance of the said child, so long as it shall be chargeable to the parish;" and by the other, the mother, by name, was ordered to pay the same sum of 1*s.* 6*d.* per week, for the like purpose, and in the same terms.

The special verdict then found that the name of "Sarah Aldis," was inserted in the last-mentioned paper-writing "by mistake for the name of the plaintiff, and that the justices intended it to be an exact copy of that first-mentioned paper-writing." The justices, at the time they signed and sealed the said paper-writings, told the plaintiff that he was thenceforth to pay 1*s.* 6*d.* a-week towards the maintenance of the child: and that immediately upon having made, signed, and sealed the said paper writings, they delivered them to the churchwardens and overseers of New Buckenham aforesaid; with directions to deliver one

^a 2 Myl. & Keen, 419.

of them to the plaintiff, and to make the demand of the money mentioned in them upon him, and to keep the other in the parish chest, and to make a memorandum upon the back of it of the service of the other. The parish officers accordingly delivered to the plaintiff the *last mentioned* of the two paper writings, viz. that by which the mother was ordered to pay the future maintenance-money; and deposited the other in the parish chest, first making thereon the indorsement of service, as directed by the magistrates. They also demanded of the plaintiff the before-mentioned sums of 15s. and 1l. 6s. 6d., which he paid. The special verdict found that "the first-mentioned paper writing was intended by the magistrates to be their original order, and the other a copy of it;" but the jurors could not say "which was first made, signed, and sealed, nor whether it was before or after the making, signing, and sealing of them, that the magistrates told the plaintiff he was thenceforth to pay 1s. 6d. a-week towards the maintenance of the said child." In January, 1830, (after the Epiphany Sessions,) the parish officers served a correct copy of the *first-mentioned* paper writing on the plaintiff. In March, 1834, one John Rotheram, one of the overseers of the parish, made oath before the defendant, that the first-mentioned paper-writing (which he produced) had been made, that the plaintiff had had due notice of it, and had not appealed against it; and that 5l. 3s. 6d. for a certain number of weekly payments, was due from the plaintiff to the parish by virtue thereof, which had been demanded, and which the plaintiff refused to pay. The defendant, upon that, summoned the plaintiff, who attended on the 3rd of April, 1834, before the defendant, when Rotheram's deposition was read over to him, but he refused to pay the money, on the ground that the order of the two magistrates delivered to him, directed Sarah Aldis, and not himself, the plaintiff, to pay the money. The defendant, upon hearing the parties, signed and sealed a warrant, by which the plaintiff was ordered to be committed to the Norwich Castle for three months, and to be kept to hard labour, unless he sooner paid the said sum of 5l. 3s. 6d. Upon this the plaintiff was apprehended, and committed accordingly, until he paid the money, which he did in four days, when he was liberated. The jury assessed contingent damages at 20l., if this Court should think the plaintiff entitled to maintain the action: otherwise they found the defendant Not Guilty.

Mr. Kelly, (with whom was Mr. Gunning), for the plaintiff.—Either there was no valid order, or that which was in the possession of the plaintiff must be taken to be the valid order. In the latter case the plaintiff was not called on to pay any money whatever; in the former there was no authority on which the magistrate could issue his warrant to imprison the party. Taken in either way, the imprisonment was not justifiable. This case must be governed by the principle adopted in *Grant v. Fletcher*,* where a broker, after making a con-

tract, delivered to the contracting parties, bought and sold notes materially differing from each other, this Court held that there was no valid contract in writing to bind the parties. There is not, as there ought to be, any legal justification made out for imprisoning the plaintiff, and judgment must therefore be in his favor.

Mr. B. Andrews, *contra*.—The order made by the magistrates, was that which they pronounced in the presence of the party; and the mistake of the clerk in putting it upon paper, cannot affect its validity. Besides, one written copy of the order here is correct, and the incorrectness of another copy cannot render it a nullity. This case cannot in the least degree be likened to a case of contract within the Statute of Frauds. In that case what passes between the parties by word of mouth cannot be treated as the contract which must be reduced into writing to have a legal existence. In this case the judgment pronounced in open Court, in the presence of the parties, is that by which both are bound.

Lord Denman, C. J.—I agree with Mr. Kelly, that if one of the subjects of this kingdom is imprisoned, the party imprisoning him must shew a legal sufficient warrant and authority for the act. I think that that is shewn in the present case. The plaintiff is the reputed father of a bastard child. On the charge of being so he is taken before a magistrate, and an order is made upon him to pay weekly a sum of money for that child's maintenance. He is informed of this at the time, and a paper purporting to be drawn up for the purpose of formally giving him notice of the order, is given to him. Another paper is drawn up, which states that he is to pay certain sums for the expences of the lying in, &c. and that the mother is to pay the weekly sum towards the child's support. He does not pay anything. Then the parish officers, who keep the correct order, summon him before the magistrates, and when he goes there, he produces the order which was served on him, and by which it appears that the mother was the party that was required to pay the weekly sum. That does appear a perfectly good cause to shew against the warrant of distress, for there was no other proof of the order on him. In consequence of this, no warrant was issued. But then another paper is obtained, properly drawn up according to the original order, directing him to pay 1s. 6d. per week; and after being regularly served upon him, he is summoned again before the magistrates, and required to make the payment. He then says that he shall not comply with it, for that he had been served with another order. As to this matter the magistrate was not bound to enter into any enquiry at all; but finding that there was a good order then in existence, was justified in issuing his warrant for the apprehension of the party. The history of the other order was not a matter to be discussed. But even if it was, the discussion could only have shewn that a mistake had existed; and of that mistake, under the circumstances of this case, the plaintiff could not take advantage. For these rea-

sons I think that the defendant, on the special verdict, has made out his justification, and is entitled to judgment.

Mr. Justice *Littledale*.—I have had considerable doubts in this case, and though I have now come to the same conclusion as the rest of the Court, it is not with the fullest degree of conviction. I put the matter on this ground that I do not consider this as a second order. The magistrates in the first instance made an adjudication, and they signed and sealed two papers. By one of these they ordered the plaintiff to pay a certain sum of money, and by the other they ordered the mother of the child to pay the same sum. The Jury has not found which of these two papers was signed first, but it must be taken that all was done at the same moment. It does not appear to me (as there was no intention at that time of making two orders), that merely because the seal was put to two papers, the magistrates were *functi officio*. They were about to make an order to provide for the future expenses of maintaining the child. They informed Wilkins that their order was upon him for the payment of 1s. 6d. per week. It seems to me that the magistrate may vary their order during the day, as the Court may vary one of its orders during the term. If the parties had gone away, and the meeting had been broken up, it might have been different; but all was done at the same time, and it was competent for them to declare what they actually meant; and that which they said, not that which the clerk by mistake wrote, fixed the nature of the order.

Mr. Justice *Williams*.—I am entirely of the same opinion. There is nothing to shew that there were two orders here; and if we look at the special verdict, the point adverted to by my brother Littledale most fully appears,—namely, that the party summoned had notice of the order intended to be made by the justices. He heard them direct and order that he should pay a sum of money for the support of the child, and he heard what that sum was, and how and when it was to be paid. The Court of Exchequer has come to a decision on this point; for there, in a case resembling the present, it was held that the valid order was that which was delivered to the parish officer. In the present case there is nothing to impeach that order, and that order would afford a sufficient warrant to the officer to put it in execution. There are, therefore, not two orders, but one, and that one is good.

Mr. Justice *Coleridge*.—It is admitted that the plaintiff cannot succeed in this action, unless what has taken place before the two magistrates amounts to a mere nullity. Let us see what that was. Suppose they had signed a paper in which Sarah Aldis had been directed to pay both the sums, but that they afterwards went on and signed another paper, directing one of the parties to pay one sum, and the other party to pay the remaining sum, and gave notice to the parties affected by the order that such was their intention. That would make the subsequent paper their valid order.

Can it be said that they, having heard and adjudicated this case, all their proceedings are to go for nothing, merely because, after expressing to the parties what was their real order, they signed a paper in which by mistake that intention was not correctly stated, but in direct opposition to that expressed intention the woman was directed to pay both the sums. I cannot bring my mind to adopt that conclusion.

Judgment for the defendant.—*Wilkins v. Hansworth, Esq.*, H. T. 1838. Q. B. F. J.

Exchequer of Pleas.

CLERGYMEN.—BANKERS.

Joint stock banking companies are within the meaning of the act 57 Geo. 3, c. 39, by which spiritual persons are forbidden to trade or deal, and contracts made with a banking company, in which there are two clergymen, are therefore void.

This was an action brought against the defendant as drawer and indorser of a bill of exchange by the plaintiff George Hall, who was a registered public officer for certain persons carrying on business as bankers under the name and description of the Northern and Central Bank of England, established under and by virtue of a statute, the 7 Geo. 4, which was entitled "An Act for the better regulating Co-partnerships of certain Bankers in England." The defendant pleaded that the bill of exchange was made and indorsed, and delivered to the plaintiff, and the promise in the declaration mentioned was made by the defendant, after the passing of a statute in the 57th year of the reign of Geo. 3, entitled "An Act to consolidate and amend the Laws relating to Spiritual Persons holding of farms, and for enforcing the Residence of Spiritual Persons on their Benefices; and for the Support and Maintenance of Stipendiary Curates in England;" and that two persons named Richard Bannett and Rowland Blaney, were spiritual persons, and were partners concerned in the carrying on of the said co-partnership or banking company; and that the said trade was carried on, as well for the gain and profit of the said two spiritual persons, as of the several other persons concerned, and that the indorsement and delivery of the bill by the defendant to the said co-partnership, was a contract made by the defendant with the said co-partnership, so including and comprehending these two spiritual persons, in the way of their trade or business of bankers, as well for their gain and profit, as for the gain and profit of the several other members thereof. There was then a similar allegation with regard to the promise, and to this plea, the plaintiff demurred specially.

Sir *W. W. Follett* was in Michaelmas Term heard on behalf of the plaintiff, and he contended that the trade or business of a banker was not within the meaning of the statute. The 57 Geo. 3, c. 39, s. 3, enacted that no spiritual person shall by himself, or by any

other for himself or to his use, engage in or carry on any trade or dealing for gain or profit, or deal in any goods, wares, or merchandises, by buying or selling for hire, gain, or profit in any market, fair, or other place, upon pain of forfeiting the value of such goods, wares, or merchandises by him, or by any to his use, bargained and bought to sell again, contrary to the provisions of this act, and that every bargain and contract so made by him, or by any to his use, in any such trade or dealing, contrary to this act, shall be utterly void and of none effect. This statute was intended to consolidate the laws respecting spiritual persons, and not to enlarge them, and the section which he had cited, was intended to re-enact the 5th and 6th sections of the 21 Hen. 8, c. 13. The provision of that act was "That no spiritual person or persons, secular or regular, of what estate or degree soever they may be, shall from henceforth by himself, nor by any other for him, nor to his use, bargain, and buy to sell again for any lucre, gain, or profit in any markets, fairs, or other places, any manner of cattle, corn, lead, tin, hides, leather, tallow, fish, wool, wood, or any manner of victual or merchandise, of what kind soever they be, upon pain to forfeit treble the value of every thing by them, or by any to their use, bargained and bought to sell again, contrary to this present act; and that every such bargain and contract hereafter to be made by them or by any to their use, contrary to this act, shall be utterly void." The intention of the legislature was, to forbid that sort of dealing only which consisted of buying and selling, because the penalty must be co-extensive with the offence; but there was no penalty, except that of the forfeiture of the goods bought. Great inconvenience would besides arise, if the Court were to put that construction on the statute which was sought to be established by the defendant.

Moule, contra, in support of the plea.—Spiritual persons were forbidden to trade in any way by the statute, and the effect of the provision was to make all contracts void which were entered into; and whether the co-partnership consisted of many or few members, it was immaterial. Here there were two spiritual persons engaged with others, but the case must be governed on the same principle as if the two spiritual persons were only interested.

Cur. adv. vult.

Lord Abinger, C. B., in Hilary Term delivered the judgment of the Court, and said, that although there were grounds suggested for special demurrer, as the attention of the Court was not drawn to them, and as they were not prepared to give their judgment upon them, they should not do so until further argument applicable to those grounds had been had. The Court, however, having been pressed for their opinion on the point which had been argued, and as it was said to be of great and immediate importance, and further, as the Court on that point entertained no doubt, they did not think it right to postpone their judgment on the general principle of the demurrer,

which was that the trade and business of a banker was not within the statute. The question arose upon the 57 G. 3, c. 39, s. 3, and the argument of the plaintiff was, that banking was not a trade within that statute, and that the act was intended to consolidate the laws respecting spiritual persons, and not to extend them, and that the section which had been read, went to re-enact the old provisions of the statute of Hen. 8. Now the first observation on this was, that the statute itself professed to do more than that. It was an act to consolidate and amend the old law, and the preamble recited that doubts having arisen upon the construction of some of the said statutes, it was therefore necessary that such provisions of the said act should be explained, and other provisions made, and that the several laws relating to spiritual persons holding of farms &c. should be consolidated, and then the third section provided that no spiritual person should by himself or any other for himself, engage in or carry on "any trade or dealing for gain or profit." Now these words were as strong and general as could well be employed, and it did not appear to the Court to be a reasonable construction of the act to reject those general and comprehensive words, which were placed in the foreground of the statute. They were not to be found in the statute of Hen. 8, but were now first introduced, and they constituted a clear and distinct enactment. They appeared to have been introduced to further the intentions of the act, and the Court therefore would not be justified in rejecting that which was a plain unequivocal enactment, and in supposing that it was introduced without meaning or intention. The words of the act of Hen. 8, were copied after those to which reference had been made; but if the legislature had not intended to extend the provisions of that act, they surely would not have prefixed the words in question. The statute of Henry was framed with an especial view to the trades then carried on; and the legislature, in forming a new act, might well be supposed to intend to carry its provisions, and direct its prohibitions, against trades and businesses carried on by spiritual persons, whatever shape they might assume; for could it be supposed that in its anxiety to rescue spiritual persons from the suspicion of those worldly cares and habits, which trade and dealing for gain and profit were supposed to generate, it would leave them exposed to the possibility of their becoming bankers, or exchange brokers? There was nothing inconsistent or unusual in an act attaching a penalty of the forfeiture of goods, when there were goods to be forfeited; and when there were no goods, by simply avoiding the contract. Allusory contracts were avoided by statute; but there was no penalty except in the actual taking of unlawful interest. A comparison between the two statutes, afforded a strong inference against the argument. The words in which contracts were made void, appeared to refer more especially to that early part of the section which forbade spiritual per-

sons to trade. The words taken from the statute of Hen. 8, might be considered as a parenthesis, including which the clause would run, "That no spiritual person shall by himself, or by any other for himself, or for his use, engage in or carry on any trade or dealing for gain or profit; and that every bargain and contract so made by him, or by any for his use, in any such trade or dealing, contrary to this act, shall be utterly void and of none effect." The words "such trade or dealing," in the latter part of the section, appeared to refer to the words "trade or dealing" which had preceded them. In that part of the section which was copied from the statute of Hen. 8, although the word "deal" was to be found, the word "trade" was not, and that part of the clause which was taken from the statute of Hen. 8, except for the purpose of forfeiting the things bought and sold, and bought with intent to sell, might have been altogether omitted. The Court were not insensible to the inconveniences which might result from this construction of the statute; but the only proper effect which the argument which had been brought forward on this point could have, would be to make the Court cautious in forming their judgment, and they could not on that account put a forced construction on the act of parliament.

Judgment for the defendant. — *Hall v. Franklin*, H. T. 1838. Excheq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assent.

To make good certain Contracts of Banking and Trading Co-partnerships.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

For Exchanging Lands in Common Fields. Lord Ellenborough.

[This bill is in Committee.]

For the safe custody of Insane Persons.

[For second reading.]

For the better Regulation of Watermen and Steam Boats on the Thames.

[For second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the better Administration of Justice at Quarter Sessions.

Lord John Russell.

To provide for the access of Parents, living apart from each other, to Children of tender age.

Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[Leave has been given to introduce this Bill.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.

Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts.

Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

To provide for international Copyright.

Mr. P. Thomson.

LAW OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases.

The Attorney General.

[These bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading the 28th Feb.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To amend the 6 & 7 W. 3, for facilitating the Inclosure of Open and Arable Fields in England and Wales.

Lord Worsley.

[This bill stands for second reading on the 7th March.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

For taking Votes of Parliamentary Electors by way of Ballot.

Mr. Grote.

[This bill has been negatived.]

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament.

Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To regulate the times of Payment of Rates and Taxes by Parliamentary Electors, and to abolish the Stamp Duty on the Admission of Freemen.

Lord John Russell.

[This bill is in Committee, and stands for 27th April.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill stands for second reading.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

Mr. Warburton.

[In Committee.]

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

Mr. Hume.

[For second reading.]

THE EDITOR'S LETTER BOX.

A correspondent, whose articles terminate on the 29th of next November, but who will not be twenty-one years of age before the 22d of February, 1839, cannot be examined before he is of age. The Examiners recently decided to this effect, and the Court confirmed the propriety of the practice.

We will take the suggestion of a Notary Public into consideration, but we question whether the number of Notaries will render the undertaking worth while.

The letter of "An Old Practitioner," on the mode of conducting the Examination of Articled Clerks, will probably appear next week.

We think G. should peruse the Limitation of Actions Act attentively, and state the grounds of his doubt a little more fully. Some of our Correspondents will probably then assist him in coming to a correct conclusion.

The letter of a correspondent at Reading, will appear in an early number.

We should be glad to know the remedy for the grievance stated by F., as it will be convenient to comprise the whole subject in the article intended for insertion.

S. M.'s letter is under consideration, but with the subject of which we must not burthen our readers too heavily.

Amongst the honors lately conferred by her Majesty, we are glad to notice the knighthood of George Stephen, the solicitor, one of the sons of the late distinguished Master in Chancery, and brother of the learned Serjeant of that name. Sir George has acted many years as solicitor for paupers,—an office which he accepted at the request of Lord Lyndhurst: and he has been also long distinguished for his zeal and ability in behalf of the abolition of slavery.

We understand that Mr. Basil Montagu will deliver two Lectures on the works of Lord Bacon at the Law Institution: one on the 5th, and the other on the 19th March, at eight o'clock in the evening.

The Legal Observer.

MONTHLY RECORD FOR FEBRUARY, 1838.

—"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

DEBATES IN PARLIAMENT RELATING TO THE LAW.

CUSTODY OF INFANTS.

THE following are the two principal speeches on the subject of this bill:—

Mr. Serjt. TALFOURD.—As the bill which I am about to request leave to introduce is the same in substance with one which was read a second time last session, I might, perhaps, venture to anticipate that there would be no objection to its introduction now, and might content myself with simply moving for leave to bring in a bill to provide for the access of parents, living apart from each other, to children of tender age. But as the subject then passed without development on my part, or discussion by others, and as the actual hearing of the law which I seek to alter may not be familiar to the minds of those who are fortunately strangers to the circumstances to which it applies, I think it better in this stage to ask the indulgence of the house for a short time, while I state what the grievances are which I shall call on them partially to redress.

The subject has reference to the rights of parents in relation to their children when the natural state of joint superintendence and protection is broken by unhappy differences, which compel or induce them to separate, without involving any breach of the marriage tie on the part of the mother. Many, I believe, there are who pass their years in the tranquil enjoyment of domestic happiness, uniting their exertions to mould the character, and contribute to the innocent delights of their children, and sharing in the requital which expanding intellect and ripening affection reflect back upon them, from whom the stern power with which the law arms the husband is veiled by gentler influences, or who, if they have learned its existence, regard it as a dead letter. They may have heard that by the law of England, the exclusive custody of all legitimate children from the hour of their birth

belongs to the father; but they will be startled to learn what is the situation of the mother with respect to them, if circumstances, however urgent, should drive her from his roof, or to what moral torture she may be legally subjected, even if she should linger beneath it. Not only may she be prevented from bestowing upon them, in their early infancy, those solicitudes of love for the loss of which nothing can compensate—not only may she be prevented from attending upon them in the extremity of sickness, but she may be denied the sight of them, and if she should obtain possession of them, by whatever means, may be compelled by the writ of *habeas corpus* to return them to her husband, or to his agents, without condition, and without hope.

That is the law, at least such is its recent exposition by the highest authorities; and how is it enforced? By process of contempt, issued at the instance of the husband against his wife, for her refusal to obey it, under which she must be sent to prison, there to remain until she shall yield, or until she shall die. And let it not be supposed that this law is one which is rarely brought into operation; the instances in which the suffering it entails are dragged before the public cognisance may be few, but it is ever in the background of domestic tyranny, and is felt by those who suffer in silence. There are, however, examples recorded in our law books, in which all the miseries of public exposure have been already endured, and the parties are beyond the reach of their removal,—to which, and to which only, I shall allude in detail, and which sufficiently exemplify the workings of this hideous injustice. One of those cases is that of "*The King v. De Manneville*," reported in 5 Scott, 221, which relates to a female child of eight months old, receiving nurture from its mother. She was an English woman, who was unhappily married to a foreigner. She had quitted him after gross ill usage, and had taken her infant with her. The husband, by stratagem or force, obtained admittance to the house where she had taken refuge, seized the child

at her breast, and carried it away, scantily dressed, in inclement weather, in an open carriage, and threatened to take it beyond the jurisdiction of the Court. As the child had been violently removed, she applied for a writ of *habeas corpus*; the case was heard on her own statement, but the Court of King's Bench were so clearly of opinion against her, that they did not hear the affidavits of the husband in answer, and rejected her application, as it did not appear that the child was physically injured for want of nourishment, nor that the husband intended to take it out of the kingdom; and although the Court of Chancery subsequently restrained the father from taking the child abroad, it was wholly without reference to the mother's claim. In Skinner's case, 9 Moore, 270, the husband had treated his wife with barbarity; they were separated; he cohabited with a woman named Deverell, and his child, of six years of age, remained in its mother's care. He obtained a writ of *habeas corpus* to take it from her; and on the case being heard, it was referred to Mr. Best, then at the bar, on a recommendation that the rigour of the law should not be enforced; and the child was, by arrangement of the parties, under the sanction of the arbitrator, placed in the care of a third person. From this person the father took it by fraud, and gave it into the care of the woman with whom he cohabited, while he himself was a prisoner for debt in Horsemonger Lane Gaol, to which place this woman resorted daily with the child. In this state of things the mother applied for a writ of *habeas corpus*; the case was heard, and the Court ordered the child to be delivered to its father. In *McClellan's case*, 1 Dowling's Practical Cases, 81, the child had been placed at a boarding school by her father; the mother removed it thence, because the child was in declining health, and afflicted by a disease by which she had already lost an elder child; and yet Mr. Justice Patteson said he had no option but to take it from her—he himself, one of the kindest of men, feeling himself compelled to deny to a mother, whose anxieties had been sharpened by the loss of one of her children, the mournful pleasure of watching over the survivor, afflicted, by a similar disease. "It might be better," said that learned and excellent person, "as the child is in delicate health, that it should be with the mother, but we can make no order on that point." The last case, in which all the authorities were reviewed, and the law solemnly declared by the Judge of the Court of King's Bench, was so recent, that, although its details were published in the law reports, I need only advert to its outlines. It was the case of a *habeas corpus* issued by the father; the mother was admitted to be entirely spotless, and the writ sought to compel her to deliver up three little girls, all under six years of age. The infants were brought to the chamber of Mr. Justice Patteson, who, after strenuous attempts to mediate between the parties, made an order for their delivery by the mother to the father. That case was brought before the Judges of the Court of

King's Bench; by them it was confirmed; by them it was enforced by process of contempt; under which this lady must have given up the children or have gone to prison for life, but that she withdrew them from the country, became an exile, and, unless happier counsels have since prevailed, retains them now, in spite of the process.

Such was the last decision of the Courts of common law,—a decision, I have no doubt, not only honestly, but reluctantly pronounced,—but which, I own, seems founded on rather an artificial process of reasoning. The father was, by law, entitled to the custody of the child; all other custody, unless sanctioned by him, was illegal: the illegal custody of a child, incapable of personal choice, is tantamount to its imprisonment; and as the writ of *habeas corpus* lay to deliver the subject from illegal restraint, it lies to take a baby from the breast,—to deliver it into the freedom of male custody from the prison of its mother's arms! I cannot help attributing the tone of some of the judgments, which may seem at first austere, to the strength of the feelings which it is necessary to subdue, and to the fear that, if nature were suffered to interpose, the chain of argument would be severed, and the legal spell dissolved. Thus, however, the Judges of the courts of law have decided, and have felt unequal to mitigate the judgment by any allowance to the mother, holding with Mr. Justice Blackstone, that, a mother, as such, is entitled to no power, but only to reverence and respect, enforcing the father's power, and having none to render the mockery of reverence productive even of compassion. The Court of Chancery, it might be thought, whose jurisdiction is supposed to relax some of the rules of law, could relieve—because it does, in some instances, interfere with the father's power. It does so, but never on behalf of the mother. There are well known cases in which, where children, by reason of property, have been made wards of that Court, the father's power has been controlled; and therefore it cannot be objected that paternal rights are, in their nature, too sacred to be subjected to the interference of Judges; but while proofs of gross profligacy or irreligious opinions have been thought sufficient to take the children from their father, no regard has been paid to the mother's claim even to be permitted to see them. The case of *Ball v. Ball*, decided by Sir Anthony Hart in 1827, in which reference was made to the antecedent authorities, at once illustrates the evil, and points out the remedy I seek to apply. In that case, a petition came on to be heard before the Vice Chancellor, on behalf of a lady named Ball and her daughter, a girl of fourteen years of age, on affidavits disclosing conduct of great immorality and violence by the father, which rendered it impossible for his wife to resort to his house, offering to support the daughter out of her own funds, and praying that, if the daughter could not be permitted to reside with her, at least some access of the mother might be secured. The Vice Chancellor at

once intimated an opinion against the first part of the prayer, asserting that there was nothing alleged to contravene the father's right to the custody of the child. He was then pressed to grant the other and far inferior prayer,—a right of access at reasonable times, the question being stated to be this,—“whether a child is to be deprived, by the brutal conduct of the father, of the company, advice, and protection of the mother, against whom no imputation can be raised?” This was the material part of the Vice Chancellor's answer to this appeal:—“Some conduct on the part of the father, with reference to the management and education of the child, must be shown, to warrant an interference with his legal right: and I am bound to say that, in this case, there does not appear to me to be sufficient to deprive the father of his common law right to the care and custody of his child. It resolves itself into a case for authorities, and I must consider what has been looked upon as the law on this point. I do not know that I have any authority to interfere. I do not know of any case similar to this, which would authorize my making the order sought in either alternative. If any could be found, I would most gladly adopt it; for in a moral point of view, I know of no act more harsh or cruel, than depriving a mother of proper intercourse with her child. I was myself counsel in two cases in which Lord Eldon refused petitions precisely similar. *Smith v. Smith*, one of them, was precisely similar in its facts to the present case, except that the father's object, there, was to compel the mother by such means as are now complained of, to give up to him some property which was settled to her own separate use. My course of argument in that case was, that, as the law allowed the mothers of bastards to retain possession of their children to the age of seven, *a fortiori*, must the law allow the case of legitimate children to be vested in the mother. The child in that case was under seven. The Lord Chancellor, however, refused the order; and before any further proceedings were had, the mother's or the child's death terminated the question. That was a very strong case; yet the Lord Chancellor held that the Court had no jurisdiction.”

When Mr. Justice Patteson truly stated, “the Court of King's Bench has authority to restore a father to his rights, but has no power to compel a father to perform his duty,” one might have hoped that, in another court, some counterprize might be found, but there is none: and, though such gross immorality as might infect the mind of a child, who has property to make him the subject of the Lord Chancellor's protection, might be the ground of rescuing him from the curse of his father's example, nothing can afford him the blessing of a mother's care, who retires from that father's house. Now I seek only to do what the Vice Chancellor would have gladly done in this case,—to confide to the Judges at law and in equity, the discretionary power of so far mitigating the law which enforces the right

of one parent as to give the other access, at fitting seasons, to a child of tender age, from which she is divided by unhappy differences with the father. When I consider what natural justice requires, I feel ashamed of the slender palliative which I propose, and I should rejoice if I could effect the transfer of the right of custody of children in their earliest infancy, especially female children, from the father to the mother, and ingraft the exception upon that altered rule. But the length of time during which the father's paramount right has been recognised by our law,—the various fibres by which that right is entwined with our social system, and the difficulty of enabling any court to deal with the property essential to a child's education and maintenance, restrict me to the simple palliative which I ask the house to concur in granting. Where is the objection in principle? Where the difficulty in practice? In a case before Lord Mansfield, that of Mr. Lytton,—where by articles of separation, the husband had bound himself to allow the access of his wife to his child, that great Judge, admitting that the Court could not, at any age, take a child from its father, said,—“That, as the father had constrained himself, by articles, to let the mother have access to the child, if he chose to take it home, he must permit access for the mother to it there.” I only ask this most reasonable condition to be implied on behalf of an innocent mother, and the order of Lord Mansfield was precisely that which I ask the Legislature to sanction.

In several cases of this painful description, the Courts have succeeded in inducing the parties to consent to some arrangement; but experience shews that consent is often asked in vain, and that, in mercy to both, a power ought to be invested somewhere, which might compel that which every Judge has desired to induce. In matters which invite only considerations of interest (how falsely fancied to supply the strongest motives to human action!) you might indulge a reasonable expectation that opposing parties would consent to arrangements which are obviously for their mutual good; but you can justify no such confidence in cases of opposing passions—in cases where the dearest relations of life are broken up, and the affections are armed against each other—where the animosities are not those scarcely deserving the name—the result of transitory petulance, of petty strife, of seeming rivalry, of social misunderstanding, the empty shows and “unreal mockeries” of hatred, which melt and vanish before a touch of kindness,—but those hatreds which arise out of the depth of love, which are fed by pleasant remembrances, and by hopes for ever crushed; and which, in their very bitterness, vindicate the power and the immortality of the affections out of which they sprung.—Experience has shown that parties who are thus placed in remotest opposition, can rarely be conciliated in a moment, or induced to listen to reason; and it is almost as much for the benefit of the stronger party as of the weaker, that authority,

apart from either, should mitigate a claim which, if strained to the utmost, must break. A husband who has resorted to the extreme measure of suing out a writ of *habeas corpus* to compel his wife to resign his children to his charge, and who must either lose them or enforce his right by sending her to prison, seems to me scarcely less an object of compassion than her whom he pursues; and, therefore, I propose to give him (leaving his greater right untouched) the opportunity of resorting to the gentler course which is open to the woman; as, in the last case in point of date, if he proceeds to extremities, he will only obtain a fruitless and a miserable victory. Let the Judges award him his suit—let them order his wife to resign her infants unconditionally to his care, let them direct the attachment to issue; a mightier power than theirs—a power against which senators legislate and judges decree in vain—the power of affection in the human soul, and the answering sympathy in all who share it, will set at naught their processes, and make them acknowledge what Milton calls “the irresistible might of weakness.” But it is not in those extreme cases, in which despair has made a feeble and timid woman bold, that the present law is most to be dreaded. It is the silent operation of its power, the threat which the husband scarcely dares utter, by which he may compel an innocent wife to resign property, or to endure slights, ignominy, disgrace,—even the endurance of daily dishonour, on pain of being excluded for ever from the sight of those who are dearer to her than life—instances in which the sufferer endures unseen, that it is chiefly felt as an engine of moral torture playing on the finest nerves of agony. In palliation of these miseries, I do not seek to alter the law of England as to the father's right. I do not ask you even to place the unspotted mother on a level with the frail mother of illegitimate children, who is by law entitled to their custody while of tender age. I do not ask to restore to infants those sacred influences of maternal love, which, through all classes of society, mould the early affections to virtue, and are now felt and blessed in its most exalted region; but I do ask some mitigation of the mother's lot—some intervals in which forsaken virtue may be cheered, and waning strength repaired, by the sight of objects of farlooking hope—some slight controul over the worst operations of that tyranny which one sex has exerted over the helplessness of the other.

Leave was then given to bring in a bill to provide for the access of parents, who live apart from each other, to their children of tender age.

The bill having on the 14th February come on for second reading,

Sir E. B. Sugden observed, that as the law at present stood the father was entitled to the custody of the children, and the bill as now worded took away from the male parent that exclusive power, for it went to place both parents in this respect, precisely on the same

footing, for the power of the father was taken away by implication. To this bill he objected on principle, and on this, amongst other grounds, that the law was bound to deal with general cases. He readily admitted that there was no more painful source of regret to a mother than to be debarred from access to her children, and therefore he was of opinion, that the very consequence which it was sought to prevent would be promoted by the bill. A wise Legislature, as it appeared to him, would seek to bind married persons by a common interest, and certainly no wise Legislature would hold out facilities for separation.

It frequently happened that very trifling differences were the subject of dispute between married persons, and assuredly, so far as the mother was concerned, the love of offspring formed the great means of preventing in such cases a separation of the parents. The great tie which prevents the separation of married persons is their common children. A wife was, in general, glad to have that excuse for submitting to the temper of a capricious husband. It was some satisfaction for an angry woman, indignant at the treatment of her husband, to say, “I would leave him immediately but for my children.” What was the consequence of this reflection? That her anger gradually cooled down; that the clouds which for a while brooded over her happiness were dispersed, and that, after a short lapse of time, she was herself the first to admit the absurdity of which she would have been guilty had she left the protection of her husband's home.

Now, this bill, by providing the wife with the means of always commanding access to her children, removed many of the obstacles which stood at present in the way of separation. In married life, the differences between the parties generally arose from their not giving way mutually to each other in its earliest stages. Some time generally elapsed before husband and wife accommodated themselves to each other's temper. If you opened a facility to separation between husband and wife at the very commencement of their union, you opened a door to divorces and to every species of immorality. It had been truly and beautifully said by one of our old writers, that any little thing could blast an infant blossom, and that the breath of the south could shake the little rings of the vine, which, after they had stiffened into the hardness of a stem under the warm embraces of the sun, could endure the storms of the north, and yet never be broken. It was the policy of the law, therefore, to give time for all the little feelings of mutual discontent between man and wife to pass away and be forgotten, and to afford an opportunity for the powerful ties of common property, a common home, and the same children, to work their natural effect on the affections of both. He had seen it stated in a fable that the best way of reconciling the differences between married people, was to confine them together in the same room, and to give them but one chair on which to sit, one table at which to eat, and one place on which to repose, and

that this mode of forcing them to accommodate themselves to circumstances was certain to re-unite their disjoined affections, and to afford solid grounds for the stability of their future connexion. He was opposed to every measure which facilitated the separation of husband and wife, and that feeling led him to oppose this bill, of which the principle led inevitably to separation. His honourable and learned friend, the member for Reading had stated several cases in which the best feelings of woman had been turned to her disadvantage, and he might even say to her oppression. He (Sir E. Sugden) admitted that such cases did sometimes occur: but was there no danger on the other side? He was prepared to contend that there was scarcely a case of differences in married life in which a wife did not ultimately reap the benefit of submission to her husband, and in which, after her irritated feelings had subsided, she did not thank God a thousand times that she had not obeyed the first impulse of passion, which prompted her to leave the house of her husband, where it was most for the interest and comfort of her children that they should be maintained and educated. The certainty which he had acquired of this being repeatedly the fact, would prevent him from ever affording any facility to separation.

But this bill was open to other objections. It not only led inevitably to separation, but it also tended to render separation perpetual. When the wife knew that she could not have access to her children, after leaving her husband's house, she was unwilling to separate herself from him for light causes. Supposing this bill to pass into law, she would argue thus:—"I can now have access to my children when I please, and I will separate immediately from my husband." The bill also led to this consequence—it would enable a woman, though divorced from her husband by the deepest crime which a wife could commit, to demand and have access to her children, and for this plain reason, that she was a parent living in separation from her husband. The bill was carefully drawn throughout in that respect. The word "parent" was used throughout, and a woman who had thus misconducted herself and disgraced her family did not cease to be a parent because she had forgotten the duties, and perhaps even lost the title of a wife. The bill seemed to contemplate such a case, and even to provide for it. Besides, there were other cases of great enormity, in which it might be fitting that the woman should have no access to her children.

His honourable and learned friend would perhaps say that his bill left it to the Judge to determine when the mother ought to have access to her children. Be it so; then let the house consider what would be the consequence of giving this jurisdiction to any one of the Judges at common law, or to any one of the Judges in equity. The bill proposed that any one of these Judges should have the power to vary or repeal the order or decree of any other of their number. What would be the consequence? A wife leaves the house of her hus-

band after a sharp quarrel on what she deems justifiable cause. She goes at once to an attorney and says, "I want and must have access to my children, whom I left in the care of my husband." He replies to her, "Then you must make out a case." She rejoins, "I can do it readily." He then tells her, "You must put your facts into the shape of an affidavit." She does so by the help of this disinterested adviser; and what will the affidavit contain? It will describe the wretchedness of her married life; not one incident which has occurred since her marriage to the disadvantage of her husband will be forgotten, and every accidental slight and unkindness will be magnified into an act of oppression and cruelty. A look of scorn, a word of anger, will be brought forward as a real grievance, and after all there will be no proper issue, as the lawyers say, for any Court to decide; for it will never happen that a woman under such circumstances will rest her claim for access to her children upon any particular instance of cruelty. No woman will ever admit that she left her husband's home on account of a short quarrel of five minutes' duration. No,—she will show that she has endured patiently a long course of ill usage and cruelty, and that she did not leave her home until endurance was no longer possible.

The husband, exasperated by such an affidavit, will then give his explanation of everything that has occurred in his married life, and will meet her statement of grievances with a statement of her provocations, and, it may be, misconduct. He will endeavour to throw the blame on his wife, just as she has endeavoured to throw it upon her husband. It was proverbially dangerous to interfere in the quarrels of man and wife, as they generally both turned against those who interfered between them! and he should be loth to incur that responsibility, even though armed with judicial authority. There would be no end to the litigation over which the judge would have to preside. Facts would be asserted on one side, and denial would be given to them on the other. Then the friends of the two parties would take share in their quarrels, and, as usual, would embitter them more and more. Mr. A., who had dined at the house with the parties, would speak to the use of some unkind word at dinner, and Mrs. B., who had her eyes always about her, would describe the withering effect of some scornful glance. The servants would be brought forward, and one half of them would swear one way, and the other half the other. Incontinence would be charged on one side, adultery on the other, and all this on affidavit, without any personal examination or cross-examination of the parties—and on all the *res geste* thus brought before him, the judge would have to decide one way or other. In the course of his professional experience, he had seen many things of this kind, arising at their outset from trifles light as air, magnified into grievances almost beyond relief. A hearing of a case of this kind would easily cost 400*l.* or 500*l.* But the case, once heard, was not ultimately de-

cided. No, it might go the round of all the judges in law and in equity. If one judge granted a decree this week, another might reverse it the next; for affidavits might be collected to show that in the interval between the two decrees the conduct of the husband or the wife had been so bad as to justify the reversal of the former decree. The bill therefore opened a scene of misery in families, which was interminable, and an extent of litigation which was perfectly frightful; and for this reason, if he had not others, he should meet it with strenuous opposition.

But how did his honourable and learned friend propose to support the jurisdiction given by this bill to the judges over the husband? By the process of contempt. If the husband would not obey the order of the judge, giving the wife access to her children, he was to be in contempt. After all the time and attention which he had bestowed upon the removal of the evils caused by the process of contempt, there would be nothing that he should see with greater alarm than our prisons filled with prisoners for contempt. It was a subject to which he had paid long and deep attention, and he should have the deepest regret in seeing the Fleet, as he had seen it, filled with the victims of the process of contempt. It was not unusual for a man to go to prison rather than pay a debt: but if he had the means, a short imprisonment generally made him willing enough to purchase his liberty by payment of the debt. But when a man got into a prison, as in this case the husband would, on a point of feeling, it would be a difficult task indeed to induce him to alter that feeling. He would, in all probability, send the children out of the jurisdiction of the court, and would say, "I'll rather die than obey this order." He would not die, but he would be in contempt, and would be sent to prison. Until he obeyed the order no one could discharge him. Obey it he never would, and what would be the consequence? Just what it was when he (Sir E. Sugden) visited the Fleet Prison some few years ago. He found there persons who had been confined for twenty or thirty years, and heard of others who had died there after a long imprisonment, for contempts of a very trifling nature, and all this without any blame to any judicial tribunal whatever, for it was not in the power of any judge to relieve contempt, when once committed. Looking, then, at the operation of this bill, he felt compelled to oppose it. The right honourable gentleman concluded by moving that the bill be read a second time that day six months.

After some discussion the bill was read a second time and committed,—Sir Edward Sugden stating that on the third reading he should take the sense of the House on the principle of the bill.

EXPIRED AND EXPIRING LAWS.

THE following are extracted from the Report of the Committee on this subject, dated 9th Feb. 1838.

LAW AMENDMENT ACT, 3 & 4 W. 4, c. 42,
passed 14th Aug. 1833.

For the further amendment of the law and the better advancement of justice.

Limitation of certain actions to be brought after the end of the session 3 & 4 W. 4. Sec. 3 expires 29th Aug. 1843.

INSANE PERSONS, 2 & 3 W. 4, c. 107,
passed 11th Aug. 1832.

amended 3 & 4 W. 4, c. 64, passed 28th Aug. 1833.

continued 5 & 6 W. 4, c. 22, passed 21st Aug. 1835.

For regulating (for three years and from thence until the end of the then next session of parliament) the care and treatment of insane persons in England. Expires end of this present session.

COUNTY PALATINE OF DURHAM, 6 W. 4, c. 19, passed 21st June 1836.

For separating the palatine jurisdiction of the county palatine of Durham from the bishoprick of Durham.

[Sec. 10. The Bishop of Durham shall hold the bishoprick subject to any provisions to be made within three years, that is, before 21st June 1839.]

STANNARY COURTS (Cornwall), 6 & 7 W. 4, c. 106, passed 20th Aug. 1836.

To make provision for the better and more expeditious administration of justice in the Stannaries of Cornwall; and for the enlarging the jurisdiction and improving the practice and proceedings in the Courts of the said Stannaries.

[Sec. 23. Appointment of registrar. To be in force during the continuance in office of the present lord warden.]

INDEMNITY OFFICES, &c. 7 W. 4, c. 12.

To indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively, until 25th March 1838. The other provisions of the act as to affidavits of attorneys' clerks, expired on the 1st day of Hilary Term, 1838.

TURNPIKE ROADS, 1 Vic. c. 18, passed 30th June 1837.

For continuing the several acts for regulating the turnpike roads in Great Britain, which will expire with the present or the next session of parliament, until 1st June 1839.

Or if parliament shall be then sitting, until the end of the then session of parliament. (See sec. 1.)

USURY, 1 Vic. c. 80, passed 17th July 1837.

To exempt certain bills of exchange and promissory notes from the operation of the laws relating to usury, until 1st Jan. 1840.

PARLIAMENTARY RETURNS.

COURT OF CHANCERY.

AN ACCOUNT of the Amount of Sums received Annually by the Accountant General of the Court of Chancery under the provisions of the Act 3 & 4 W. 4, c. 49, and of the Amount of the Sums paid annually for Salaries and otherwise thereon, from 25th Nov. 1833, to 25th Nov. 1837.

Sums paid annually for the years ending respectively 25th Nov.

To the MASTERS in 1834, 18,750*l.*; 1835, 18,750*l.*; 1836, 18,292*l.* 16*s.* 11*d.*; 1837, 18,025*l.*—making a total of 73,817*l.* 16*s.* 11*d.*

To the REGISTRARS—1834, 19,298*l.* 13*s.* 10*d.*; 1835, 19,372*l.* 0*s.* 11*d.*; 1836, 18,673*l.*; 1837, 18,673*l.*—amounting together to the sum of 76,016*l.* 14*s.* 9*d.*

To the REPORT OFFICE—1834, 6450*l.*; 1835, 6450*l.*; 1836, 6450*l.*; 1837, 6300*l.**—Total 23,650*l.*

To the EXAMINERS—1834, 1885, 1836, and 1837, 2300*l.* each year, amounting to 9200*l.*

To the AFFIDAVIT OFFICE—1834, 1175*l.*; 1835, 6, & 7, 940*l.* each year, being 3995*l.*

The total payments under act 3 & 3 W. 4, c. 94, to the above offices combined, are, for 1834, 47,973*l.* 13*s.* 10*d.*; 1835, 47,812*l.* 11*d.*; 1836, 46,655*l.* 16*s.* 11*d.*; 1837, 46,233*l.*, making the whole expenditure for the four years 188,679*l.* 11*s.* 8*d.*

Sums received annually for the years 1833, 4, 5, 6, & 7, ending respectively 25th Nov.

MASTERS OFFICE in 1834, 26,329*l.* 4*s.* 4*d.*; 1835, 31,487*l.* 2*s.* 8*d.*; 1836, 31,720*l.* 15*s.* 7*d.*; 1837, 26,332*l.* 10*s.* 4*d.*, amounting to 115,869*l.* 12*s.* 11*d.*

REGISTRARS—1834, 15,548*l.* 19*s.* 6*d.* 1835, 16,413*l.* 8*s.*; 1836, 16,623*l.* 1*s.* 10*d.* 1837, 14,729*l.* 14*s.* 3*d.*, amounting to 63,315*l.* 5*s.* 7*d.*

REPORT OFFICE—1834, 5978*l.* 16*s.* 1835, 6514*l.* 6*s.* 7*d.*; 1836, 6695*l.* 1*s.*; 1837, 6279*l.* 18*s.* 5*d.*, amounting to 25,368*l.* 2*s.*

EXAMINERS—1834, 1932*l.* 1*s.* 6*d.*; 1835, 2365*l.* 17*s.* 2*d.*; 1836, 2300*l.* 19*s.* 1*d.*; 1837, 1894*l.* 3*s.* 4*d.*, amounting to 8493*l.* 1*s.* 1*d.*

AFFIDAVIT OFFICE—1834, 3081*l.* 5*s.* 1*d.*; 1835, 2896*l.* 11*s.*; 1836, 3005*l.* 19*s.* 4*d.*; 1837, 2917*l.* 7*s.* 10*d.*, amounting to 11,901*l.* 3*s.* 3*d.*

The total receipts of the above offices combined, for each year, being for 1834, 52,870*l.* 6*s.* 5*d.*; 1835, 59,677*l.* 5*s.* 5*d.*; 1836, 60,245*l.* 16*s.* 10*d.*; 1837, 52,153*l.* 14*s.* 2*d.*; making the whole receipts for the four years, 224,947*l.* 2*s.* 10*d.*, to which sum is to be added small amounts received in each year from the Gen-

lemen of the Chamber and Clerk of the Public Office, when, after deducting the several payments, there remains a balance now to invest of 6175*l.* 5*s.* 11*d.*

(Signed)

W. G. ADAM,
Accountant General.

ACCOUNTS RESPECTING FEES, &c. IN THE COURT OF CHANCERY.

N. 1.

An Account of the largest Sum received by the Registrars of the Court of Chancery for a Decree or Order of that Court, in the years 1831 and 1837

1831	£45 15 2
1837	4 16 8

No. 2.

An Account of the Fees received in the Office of Registrars in the Court of Chancery in each of the years ending respectively on the 25th Nov. 1833, and 25th Nov. 1837.

1833	£29,139 7 10
1837	14,908 0 11

The Registrars' fees in 1833 were subject to fees payable to the Master of the Rolls, agents' salary, land tax, and 6*d.* duty, expenses of stationery, coals and candles, and other office expenses.

Note.—The fees received in the Registrars' Office since the 25th Nov. 1833, are accounted for up to the 20th of each month, and paid into the Bank of England with the privy of the Accountant General of the Court of Chancery once in every month.

Of the above sum of 14,903*l.* 11*d.* received in the Office, the sum of 173*l.* 6*s.* 8*d.* has been paid to the Master of the Rolls for fees on account of decrees and dismissals.

No. 3.

An Account specifying the Reduction of Fees in the Court of Chancery directed to be made by the Order of the Lord Chancellor and other Judges of that Court, dated 23d Feb. 1837.

For every decree or order on the original hearing of a cause and on further directions (exclusive of the Master of the Rolls' fees on decrees, of 6*s.* 8*d.*) 4*l.* 10*s.* Reduced under Order of 23d Feb. 1837, to 3*l.* 10*s.*

For every money order 2*l.* 10*s.*

For every order for payment of money out of Court, and for no other purpose, where the sum or sums thereby specifically directed to be paid shall not exceed in the whole 100*l.* ..10*s.*

For every order for transfer out of Court, or sale, of any sum or sums of Government stock or South Sea annuities (excepting long annuities and annuities for terms of years), and for no other purpose, where the sum or sums thereby specifically directed to be transferred or sold shall not exceed in the whole 100*l.* stock or annuities10*s.*

* Mr. Standen, the late Clerk of Reports, died before the quarter's salary, in May 1837, became due, and the present Clerk, Mr. John Reid, was not appointed till after he had received his salary and compensation as first Clerk of Entries up to November 1837.

For every order on arguing pleas and demurrers, 2*l*. Reduced under Order 23d Feb. 1837, to 1*l*.

The Registrars are unable to form any estimated amount of such reduction.

H. FRY, Senior Registrar.

COURT OF BANKRUPTCY.

"A STATEMENT of the amount transferred and paid out as dividends; of the amount paid by orders of Court, and of the Judges, from the 31st day of December, 1836, to the 1st day of January, 1838; also showing the unappropriated balance existing on the following accounts, and standing to the credit of Basil Montagu, Esq., as Accountant in Bankruptcy, on the 1st day of January, 1838; viz.: 1. The Bankruptcy Fund Account; 2. The Interest arising from Bankruptcy Fund Account; 3. The Unclaimed Dividend Account; 4. The Secretary of Bankrupt's Account; 5. The Secretary of Bankrupt's Compensation Account,—together with appendixes to the two last named accounts, of the payments made, to whom, and whether as salaries, compensations, or other allowances."

DIVIDENDS.—Amount transferred from 31st Dec., 1836, to 1st Jan., 1838, amounted to 614,284*l*. 0*s*. 7*d*.; and the amount paid out for the same period, was 520,606*l*. 8*s*. 9*d*. The amount of payments made by ORDER OF COURT, was 14,793*l*. 13*s*. 9*d*.; of the LORD CHANCELLOR, 2,210*l*. 16*s*. 3*d*.; and of the COMMISSIONERS, 202,409*l*. 16*s*. 4*d*.

The NET BALANCES existing on 1st January, 1838, were, 1st, On the *Bankruptcy Fund Account*, 725,117*l*. 19*s*. 9*d*.; 2d, On the INTEREST arising from such account, 8,674*l*. 11*s*. 6*d*.; 3d, On the *Unclaimed Dividend Account*, 19,056*l*. 10*s*. 4*d*.; 4th, On the Secretary of Bankrupt's Account, 11,906*l*. 1*s*. 9*d*.; 5th, On the Secretary of Bankrupt's Compensation Account, 3,599*l*. 1*s*. 3*d*.

APPENDIXES TO THE 4TH AND 5TH ACCOUNTS, VIZ.:—

4th. THE SECRETARY OF BANKRUPT'S ACCOUNT.

PAYMENTS MADE as Salaries.—To the Chief Judge, Rt. Hon. T. Erskine, 3,000*l*.; to Sir Geo. Rose, 2,000*l*.; and to Sir John Cross, 2,000*l*., amounting to 7,000*l*.

To the following five Commissioners, viz.:

Messrs. Evans, Fane, Holroyd, Merivale, Williams, and Fonblanque, 1,500*l*. each, amounting to 9,000*l*.

To the two Registrars, Sergeant E. Lawes and W. Barber, 800*l*. each; and to the seven Deputy Registrars, Messrs. Barnes, Bousfield, Campbell, Gregg, Parry, Richardson, and Whitehead, 600*l*. each; and to John Vizard, Deputy Registrar to June, (since resigned), 413*l*. 8*s*. 5*d*., amounting together to the sum of 6,213*l*. 8*s*. 5*d*.

To Wm. Vizard, Secretary of Bankrupts, 1,200*l*.; to his first clerk, J. Holskamp, 500*l*.; and to his second clerk, J. Miller, 300*l*., being 2,000*l*. The total payments to Judges, Commissioners and Officers, from the *Secretary of Bankrupt's Account*, are therefore 24,213*l*. 8*s*. 5*d*.

5. THE SECRETARY OF BANKRUPT'S COMPENSATION ACCOUNT.

PAYMENTS MADE as Compensations.—To John Beauclerk, 100*l*.; to the fifteen late Commissioners, Messrs. Beames, Belt, Clayton, Collinson, Dynely, Ellison, Hollinshead, Metcalfe, Newland, Rawlins, Roberts, Swanston, Smith, Trebeck, and Turner, 200*l*. each, being 3,000*l*.

To John Welfit, late Commissioner, 121*l*.; to John L. Dampier, late Commissioner, up to 29th Sept., 1836, 143*l*.; to the executors of J. Seton, late Commissioner, to 9th Oct., 1836, 148*l*. 18*s*.; and to Chas. Elley, late first clerk to Secretary of Bankrupts, 550*l*., being 962*l*. 18*s*.

To the Rev. T. Thurlow, Patentee of Bankrupts, due 11th January, 1837, 7,352*l*. 14*s*. 6*d*., due 11th July, 1837, 3,676*l*. 7*s*. 3*d*., making 11,029*l*. 1*s*. 9*d*.

HANAPER OFFICERS.

To Rev. — Thurlow, Clerk of the Hanaper, 484*l*. 16*s*. 9*d*.; to J. Holdship, chaff wax, 568*l*.; to Robert Hand, sealer, 449*l*.; to Wm. Learnmouth, Lord Chancellor's messenger, 200*l*.; to W. T. Smith, Public Office, Chancery, 100*l*.; to H. Twiss, Examiner of Letters Patent, 50*l*.; to A. Blazdell, running porter, 17*l*. 8*s*. 4*d*.; to Wm. Lewis, crier, 17*l*. 8*s*. 4*d*.; and to the six Comptrollers of the Hanaper, viz.: Messrs. Allen, Vesey, Turtton, Pollen, Utterston, and Gawler, 52*l*. each, being 312*l*.

The total payments made from the *Secretary of Bankrupt's Compensation Account*, inclusive of those made to the *Hanaper Officers*, therefore amount to the sum of 17,290*l*. 13*s*. 2*d*.

25th January, 1838.

ACCOUNTS RESPECTING THE COURT OF BANKRUPTCY.

AN ACCOUNT of the Amount of the Sums and Securities standing, on the 1st day of January 1838, at the Bank of England, in the Name of the Accountant in Bankruptcy, specifying the different Heads under which the same stand, and the annual Income derivable from the Fund entitled "The Bankruptcy Fund Account;" also, an Account of the Amount of the annual Salaries payable to the Judges, Commissioners, and other Officers of the Court of Bankruptcy; also, an Account showing the Expense of the Court of Bankruptcy as compared with that of the former Commissioners, and of Savings made in other respects by the System prescribed by the Act for establishing the Court of Bankruptcy.

N.B.—This Return is made to 1st January 1838, instead of the 19th December 1837, as required by Order of the House, in conformity with the Act of 5 & 6 W. 4, c. 29, which requires a Return to be made to Parliament on 1st January in each year.

Amount standing on 1st January 1838 to the Credit of the Accounts entitled, viz.

	£	s.	d.	£	s.	d.
General Account of Bankrupts' Estates	75,861	2	11			
The Secretary of Bankrupts' Account	11,906	1	9			
The Secretary of Bankrupts' Compensation Account ..	3,599	1	3			
The Interest arising from Bankruptcy Fund Account ..	8,674	11	6			
The Unclaimed Dividend Account	19,066	10	4			

Total Cash 119,079 7 9

There was further standing to the Credit of the under-mentioned Account the following Securities, viz.

	£	s.	d.
General Account of Bankrupts' Estates	294,403	12	3
The Bankruptcy Fund Account	725,117	19	9

Total Securities 1,019,521 12 0

Total Cash and Securities 1,138,618 19 9

That the annual Income derivable from the Fund entitled "The Bankruptcy Fund Account" was on 1st January 1838 21,751 10 8

That the Salaries payable to the Judges, Commissioners, and other Officers of the Court of Bankruptcy amount to 26,200 0 0

That the following contains an Account showing the Expense of the Court of Bankruptcy as compared with that of the former Commissioners, and of Savings made in any other respect by the System prescribed by the Act for establishing the Court of Bankruptcy.

EXPENSES paid prior to the establishing the COURT of BANKRUPTCY, as per Return to the House of Lords, ordered to be printed 17th October 1831.

	£	s.	d.	£	s.	d.
Seventy Commissioners, on an Average 380 <i>l.</i> per Ann. each	26,600	0	0			
Salaries and Expenses of the Office of the Secretary of Bankrupts	5,289	0	0			
Salaries and Fees heretofore paid to the Patentee in Bankruptcy	11,253	0	0			
Charges of Messengers to the Commissioners beyond those now received	4,923	3	4			
Expenses heretofore incurred by Assignments, and Bargains and Sales, abolished by the Act of 1 & 2 W. 4.	18,000	0	0			
Total Expenses				66,065	3	4

EXPENSES OF NEW ESTABLISHMENT.

Present Amount of Salaries paid to Judges and other Officers, as before stated	26,200	0	0			
Annual Sums paid to certain Officers of the Lord Chancellor in lieu of Fees, after deducting the Sum of 1,085 <i>l.</i> 19 <i>s.</i> 9 <i>d.</i> received from the Clerk of the Hanaper in respect to such Fees	1,112	13	11			
Fees received and expended under First Schedule, Act 1 & 2 W. 4, c. 56. (See Return to House of Commons, 26th April 1833,) at the Rate of	739	9	8			
Fees received and expended under Second Schedule same Act. See Return to same Order	2,347	8	4			
Total Expenses				30,399	11	11
Expenses under the old System	66,065	3	4			
Expenses under the new System	30,399	11	11			
Savings				35,665	11	5
To which may be added the annual Dividends received from the Dead Fund, invested as before stated				21,751	10	8
Total annual Savings				£57,417	2	1

N.B.—There are at present payable to the Patentee, Commissioners and other Officers, Compensations terminating with their Lives, amounting to £10,426 14 6

And there are Allowances to Official Assignees under the new System, but which are more than compensated by the Savings of the Charges of Accountants and Solicitors under the old System.

5th February 1838.

BASIL MONTAGU.

LEGAL OBITUARY OF 1837.

January.

- 4.—John Fonblanque, a Benchers of the Middle Temple and King's Counsel. See Memoir, vol. 13, page 193.
 John Gamaliel Lloyd, one of the Benchers of the Middle Temple, aged 68. He was called to the Bar in 1794.
- 9.—Charles Tones, upwards of thirty years Clerk of the Arraigns and Indictments on the Oxford Circuit.
- 16.—T. K. Y. Ashfield of Redman's Row, Mile-end, Solicitor, aged 40.
 S. Pain of Axbridge and Huntspill, Solicitor, aged 75.
- 18.—John Steer, Barrister at Law. He was called to the Bar in 1823, and went the Home Circuit.
- 19.—William Dickenson, Barrister at Law, many years M. P. for Somersetshire, aged 66. He was called to the Bar in 1796.
- 21.—Charles Milner, Barrister at Law, Recorder of Leeds, aged 47.
- 30.—Thomas Peake, jun., Barrister at Law, second son of Mr. Serjeant Peake, aged 32.

February.

- 1.—Cuthbert Stephen Romilly, Barrister at Law, nephew to the late Sir Samuel Romilly. He was called to the Bar in 1815.
 Bryan Blundell, Hollingshead. He was called to the Bar in 1815, and was formerly a Commissioner of Bankrupts.
 Nathaniel Dunbar, of the Home Circuit, Barrister at Law, aged 50.
 J. T. Gillebrand, formerly of Austin Friars, Solicitor, aged 43. He had practised as an Advocate for fourteen years in Van Dieman's Land, where he was murdered on a journey by a party of the Aborigines.

March.

- 5.—Adam Fitzadam, Barrister at Law. He was called to the Bar in 1822.
- 8.—Joseph Jekyll, formerly King's Counsel, and one of the Masters in Chancery. See Memoir, vol. 13, page 435.
- 9.—Thomas Clarkson, Barrister at Law, aged 40. He was called to the Bar in 1825, and went the Northern Circuit. He was lately appointed one of the Police Magistrates.
- 14.—William Palgrave Simpson, Barrister at Law. He was called to the Bar in 1833.
 Randle Jackson, one of the Benchers of the Middle Temple. He was called to the Bar in 1793.
 James Turner of Bedford Row, Solicitor. A member of the Incorporated Law Society.
- 17.—William John Ching, aged 44. He was called to the Bar in 1816, and practised in the Court of Chancery.
- 28.—Sir James Burrough, late one of the Judges of the Court of Common Pleas. See Memoir, vol. 13, p. 450.

George Vandervee of the Exchequer Office, Translator of Ancient Records, and a member of the Incorporated Law Society.
 Henry James Humphrys, Barrister at Law. He was called to the Bar in 1824.

April.

- 3.—William Simmons, Barrister at Law. He was called to the Bar in 1827.
- 21.—John Blackburne, King's Counsel, M. P. for Huddersfield, and one of the Benchers of the Middle Temple, aged 50. He was called to the Bar in 1813, and was much distinguished on the Northern Circuit. He was the Chief Commissioner on the Inquiry into Municipal Corporations.

May.

- 3.—John Henry Standen of the Report Office of the Court of Chancery, aged 36.
- 4.—James Gordon of Durham, Solicitor.
- 21.—Charles Bowles of Shaftesbury, Solicitor, one of the members of the Incorporated Law Society.
- 26.—Thomas Brace, aged 66, formerly of Surrey Street, Strand, Solicitor, a member of the Incorporated Law Society, and formerly Principal of Clement's Inn.
 Thomas Cayley Shadwell of Gray's Inn, a Solicitor, one of the brothers of the Vice Chancellor of England, and a member of the Incorporated Law Society.

June.

- 10.—Richard Newcombe Gresby, Barrister at Law. He was called to the Bar in 1829.
- 14.—John Pritchard of Broseley, Solicitor.

July.

- 4.—George Lewis Newnham Collingwood, Barrister at Law, aged 55. He was called to the Bar in 1807.
- 7.—R. D. Michell of Penryn, Solicitor.
 O. L. Hesse, Barrister at Law. He was called to the Bar in 1797.
- 13.—Bargrave Wyborn, Barrister at Law, aged 55.
- 14.—Robert Isherwood of Doctors' Commons, Proctor, one of the members of the Incorporated Law Society.

August.

- 24.—William Bentham, Barrister at Law, aged 80, F.S.A. He was called to the Bar in 1801.
- 26.—Charles Scott Stokes, of the firm of Stokes, Hollingsworth, and Tyerman, of Cateaton Street, Solicitor, one of the members of the Incorporated Law Society.
 Henry Norton of Gray's Inn, Solicitor, of the firm of Norton and Chaplin, and a member of the Incorporated Law Society.

September.

- 1.—Joseph Page of Warwick, Solicitor, aged 47.

4.—William Healing of Lawrence Lane, Solicitor, one of the members of the Incorporated Law Society, aged 76.

6.—William Henry Booth, aged 52, F.S.A. and F.G.S. He was called to the Bar in 1816.

8.—Sir Samuel Egerton Brydges, aged 75. He was called to the Bar in 1787.

John Stafford, Clerk of the Indictments for Middlesex, and Chief Clerk of the Public Office, Bow Street, aged 71.

12.—Sir Henry Gwillim, Knt., who was called to the Bar in the year 1787, formerly one of the Judges at Madras.

John Bogue of John Street, Bedford Row, Solicitor, and a member of the Incorporated Law Society.

15.—Thomas Carr, Secretary of Lunatics, and formerly a Commissioner of Bankruptcy, aged 70.

Richard John Elsam of Great James Street, Solicitor, one of the members of the Incorporated Law Society.

October.

1.—Theophilus Jeyes, Town Clerk of Northampton, after holding that office thirty-seven years.

9.—James Noke Wilmot of Salisbury, Solicitor.

William Owen, Queen's Counsel, and one of the Benchers of Lincoln's Inn. See Memoir, p. 199, *ante*.

17.—John Thomas Miller of Furnival's Inn, Solicitor, and a member of the Incorporated Law Society, aged 37.

24.—Plowden Presland, Barrister at Law, aged 62. He was called to the Bar in 1823.

28.—Thomas Scotchburn of Great Driffield, Solicitor, aged 46.

November.

5.—George Bramwell of the Temple, Solicitor, and a member of the Incorporated Law Society, aged 74, author of several valuable professional works.

6.—G. M. A. Maude of Leeds, Solicitor.

7.—Richard Poole, Solicitor, of the firm of Poole and Gamlen, of Gray's Inn, one of the members of the Incorporated Law Society.

11.—William Unthank of Norwich, Solicitor, aged 80.

12.—Thomas Hutchinson, Barrister at Law. He was called to the Bar in 1818.

17.—Thomas Peake, Serjeant at Law, aged 67. He was called to the Bar in 1796, and was the author of a concise and valuable work on the Law of Evidence.

December.

17.—Samuel Hardisty of Great Marlborough Street, Solicitor, a member of the Incorporated Law Society.

20.—Michael Bentley, one of the Benchers of the Middle Temple. See Memoir, p. 275, *ante*.

21.—Henry Milnes of Lincoln, Solicitor, aged 32.

22.—William Edward Tallents, Solicitor, Town Clerk of Newark-upon-Trent, and a member of the Incorporated Law Society.

24.—Robert Ray, a Bencher of the Temple, formerly one of the Prothonotaries of the Common Pleas. He was called to the Bar in 1785.

25.—Edward Richardson of the Adelphi, Solicitor, aged 37, one of the members of the Incorporated Law Society. He had recently received the bequest of a large fortune.

28.—William Broughton Flexney of New Bowell Court, Solicitor, one of the members of the Incorporated Law Society, and formerly Principal of Clement's Inn, aged 65. In 1798 he was appointed Secretary to the old Law Society (established in 1737), and held that office until the dissolution of the Society, after the opening of the present Incorporated Law Society,—a period of thirty-five years.

BARRISTERS CALLED.

Hilary Term, 1838.

LINCOLN'S INN.

The Hon. Thomas Denman.
Frederick Sims Williams.
Thomas Sydenham Clarke.
Horatio James Higgins.
Richard Jennings.
John Wilkin, jun.
John Beckles Hyndman.
John Fisher Murray.
James Haig.

INNER TEMPLE.

John Robert Hope.
George Young Rohson.
Thomas Christopher Burrow.
William Frederick Pollock.
James Macanlay.
Thomas Rutherford.
John Dawson.

MIDDLE TEMPLE.

James Sampson.
John Gray.
Joseph Bayley Haynes.
Charles Stewart.

GRAY'S INN.

John Stone.
Henry Marcus Mangin.
Henry Hugh Pyke.

CANDIDATES WHO PASSED THEIR EXAMINATION IN HILARY TERM, 1838.

<i>Clerk's Name.</i>	<i>Attorney's Name and Residence.</i>
Atkinson, John	John Tindall, Huddersfield.
Asker, Samuel Hurry	James Chase, Norwich; Alfred Barnard, Norwich.
Banning, John Johnson	William Tristram Keighley, Liverpool.
Bartrum, Thomas Comerford	Thomas Bartrum, 72, Old Broad Street.
Batten, John, the younger	John Batten, Yeovil.
Benson, Joseph	Robert Gamlen, Gray's Inn.
Bernard, Henry	Benjamin Hope, Wells.
Borlase, Walter	John King Lethbridge, Launceston; Charles Gurney, Launceston.
Brooking, John	Richard Walter Wolston, Brixham.
Brown, John Johnson	Richard Finlow, Liverpool.
Buchanan, Charles	George Greenway, Attleborough Hall, Warwick; James Williams Buchanan, Nuneaton.
Burbury, Thomas Potter	Daniel Winter Barbury, Warwick; Samuel Younge, Sheffield.
Burnaby, Charles Sherrard	Thomas Fowke Andrew Burnaby, Newark-upon-Trent.
Burrow, Robert	Henry Daubney Melhuish, Budleigh Salterton.
Busby, Charles Stanhope Burke	Jacob Boys, Brighthelmstone.
Clarke, Edward	Samuel Chorlton, Hyde.
Cobbett, Richard Baverstock	Edward Chamberlain Faithfull, 5, King's Road, Bedford Row.
Brown	
Crawley, Thomas William	George Abraham Crawley, Salisbury Square.
Cull, George, the younger	Thomas Coombs, Dorchester.
Douglas, Adye	Edward Harrison, Southampton.
Doyle, Edward	Francis Blake, 6, King's Road, Bedford Row.
Druitt, James	Henry Rowden, Wimborne Minster.
Espin, John	Charles Few, 2, Henrietta Street, Covent Garden.
Farwell, Frederick Cooper	George Farwell, Totnes, Devon.
Fearn, Samuel	John Coles Symes, 31, Fenchurch Street.
Fenton, Joseph	John Siddall, Sheffield; John Copeland, the younger, Sheffield.
Fennell, William Burgoyne	Thomas Branson, Sheffield.
Flower, John	Richard Hannam, East Retford; William Newton, East Retford.
Fosbrooke, Thomas	Benjamin Frear, Derby.
Foulger, Charles	Richard Willey, Wellclose Square.
Gartside, Henry	Edmund Robert Harris, Preston; Edward Brown, Oldham.
Gibson, John Robinson	Charles Richard Roberts, Billericay; Edmund Huntley, Billericay; Joseph Jessopp, Waltham Abbey.
Gilpin, Edmund	Henry Moore Griffiths, Birmingham.
Greenstreet, Henry John	William Smith, Hemel Hempstead.
Gregg, Humfrey Archer	William Preston, Kirkby Lonsdale; William Romaine Gregg, Kirkby Lonsdale.
Greves, John Edward Henry	George Matthew Paget Kitchin, Barford.
Griffiths, Joseph Crane	John Davies Corrie, Welshpool.
Guy, John	Charles Addis, 10, Great Queen Street, Westminster, and Hampton Wick.
Hamilton, Arthur Richard	Edward Leigh Pemberton, Salisbury Square.
Harle, William	Thomas William Keenlyside, Newcastle-upon-Tyne.
Hastie, Arthur	Charles Nairn Hastie, the elder, East Grinstead.
Hicklin, Benjamin, the younger	Joseph Forster, Wolverhampton.
Hicks, Peter Edward	John Shearman, Bartlett's Buildings, Holborn; Richard Marriott Freeman, Northampton.
Hobbes, William James	Robert Hiorne Hobbes, Stratford-upon-Avon; Joseph Cresswell, Birmingham.

<i>Clerks' Name.</i>	<i>Attorney's Name and Residence</i>
Holthouse, Henry James	Charles Bell, Bedford Row; John Duncan, 10, Liverpool Street.
Holyoake, John	Thomas Gab Curtler, Droitwich.
Hooper, George	Robert Taylor, 14, New North Street, Red Lion Square; Gustavus Thomas Taylor, 18, Featherstone Buildings.
Hussey, Edward Law	George Law, Lincoln's Inn.
Jeffes, John	George Carthew, Harleston.
Johnson, Henry	Lloyd Salisbury Baxendale, Great Winchester Street.
Lovell, Charles Henry	Charles Wells Lovell, 14, South Square, Gray's Inn.
Lyon, Thomas Headley	Thomas Wortham, Royston.
Maltby, John	William Eaton Mousley, Derby.
Markham, Arthur Bayley	George Hillyard King, 13, Tokenhouse Yard; Thomas Fletcher Robinson, Tokenhouse Yard.
Micklefield, Anthony Horex Roger	Roger Micklefield, Stoke Ferry, Norfolk.
Morel, Charles Baptiste	Richard James Hitchcock, Davies' Street, Berkeley Square; William Foster, Norwich.
Moss, Edward	George Faulker, Bedford Row.
Nettleship, Richard Hutchinson	Thomas Bigsby, East Retford.
Nicholson, William	Peter Nicholson, Warrington; Alexander Ray, Manchester.
Nicholson, Edward	Frederick Fisher, Doncaster.
Norton, Henry Elland	Henry Norton, 3, Gray's Inn Square.
Ornsby, Henry William	George Ornsby, Durham; Joseph Blower, 61, Lincoln's Inn Fields.
Pascoe, James	George Dennis John, Penzance.
Pickthall, William	John Poole, Gill Head, Cartmil, Lancaster; Thomas Wardle, Kendal.
Pinkney, Thomas Francis	George Truwhitt, Cook's Court, Carey Street.
Pritt, William	William Hinde, Liverpool.
Radford, John George Galloway	Thomas Avison, the younger, Liverpool.
Rawlings, Benjamin William	James Fawcett, Jewin Street, Cripplegate.
Roberts, James	James Chapman, Manchester.
Roberts, Richard	George Faulkner, Bedford Row.
Rutter, John	John Rowland, Shaftesbury; William Hannen, Shaftesbury.
Samler, Wellington	Francis James Ridsdale, 5, Gray's Inn Square.
Sandford, Polliott	Charles Scott Stokes, 24, Cateaton Street; Nathaniel Hollingsworth, 24, Cateaton Street.
Sharp, William, the younger	William Sharp, Lancaster.
Shaw, Benjamin	William Fellowes, the younger, Castle Street, Dudley; Charles Twamley, Dudley.
Shutt, William Pargete	George Holyoake, and George Robinson, Wolverhampton.
Simpson, Samuel	John Thompson, Manchester; Alexander Butler Rowley, Manchester.
Smith, Thomas	Edward Nelson Alexander, Halifax; Josiah Smithson, Pontefract, York.
Smith, Francis John	Richard Poole, Gray's Inn.
Spike, Edward	William Spike, 15, Clifford's Inn.
Stawman, Joseph	Joseph Dunning, Leeds.
Stenton, Henry Cawdron	George Hodgkinson Barrow, and Richard Bridgman Barrow, Southwell.
Stone, Thomas	John Michael Morris, 7, Bank Chambers.
Street, Thomas Henry	Thomas Street, Brabant Court, Philphot Lane.
Tagart, Charles Fortesque	Joseph Warner Bromley, Gray's Inn.
Thairlwall, Frederick	James Brown Simpson, Richmond.
Thrupp, John	John Philpot, jun., Southampton Street, Bloomsbury.
Tillman, William Treby	John Teague, Devonport.
Trappes, Richard	Thomas Ainsworth, the younger, Blackburn; James Neville, Blackburn.
Turnley, Thomas Wesley	Joseph Turnley, Ipswich and Peasanhall, Suffolk; John Evans, 58, Lincoln's Inn Fields
Watts, James Hooke	George Stow Baron, Plymouth.
West, William	James Beaumont, 19, Lincoln's Inn Fields; John Pike, 29, Golden Square.
Williams, Charles Reynolds	Michael Clayton, 6, New Square, Lincoln's Inn.
Wright, Joseph Hornsby	Alexander Mitchell, 4, New London Street, Crutched Friars.
Young, Robert	George Edmunds Williams, Tewkesbury.

MISCELLANEA.

NECESSITY OF COUNSEL FOR PRISONERS.

WHEN Mr. Anthony Ashley Cooper (afterwards Earl of Shaftesbury,) was the representative in parliament for Poole, he brought in a bill for granting counsel to prisoners in cases of high treason. This he looked upon as important, and had prepared a speech in their behalf; but when he stood up to deliver it in the House of Commons, he was so intimidated, that he lost all memory, and was quite unable to proceed. The house, after giving him a little time to recover from his confusion, called loudly for him to go on, when he proceeded to this effect.—“If I, Sir,” addressing himself to the speaker, “who rise only to give my opinion on the bill now depending, am so confounded that I am unable to express the least of what I proposed to say, what must be the condition of that man, who, without any assistance, is pleading for his life, and is in apprehension of being deprived of it.”

LIMBS OF THE LAW.

Sir Walter Scott in his journal has the following very sensible observations on the choice of the legal profession by parents for their sons:—“The Scotch seem to conceive Themis the most powerful of goddesses. Is a lad stupid? the law will sharpen him;—is he mercurial? the law will make him sedate;—has he an estate? he may get a sheriffdom;—is he poor? the richest lawyers have emerged from poverty;—is he a Tory? he may become a depute-advocate;—is he a Whig? he may with far better hope expect to become, in reputation at least, that rising counsel Mr. —, when in fact he only rises at tavern dinners. Upon some such wild views, advocates and writers multiply till there is no life for them, and men give up the chase, hopeless and exhausted, and go into the army at twenty-five, instead of eighteen, with a turn for expense perhaps—almost certainly for profligacy,—and with a heart embittered against the loving parents or friends who compelled them to lose six or seven years in dusting the rails of the stair with their black gown, or scribbling nonsense for twopence a page all day, and laying out twice their earnings at night in whisky punch.”

LIST OF NEW PUBLICATIONS.

The Acts for the Commutation of Tithes with Explanatory Notes. By Leonard Shelford, Esq. of the Middle Temple. 2nd Edition, corrected and greatly enlarged. Price 12s. 6ds.

Carrington & Payne's Reports of Cases. Vol. 8, Part 1. Price 9s. 6d.

Bingham's Reports of Cases in the Court of Common Pleas. Vol. 4, Part 1, Price 6s.

Young and Collyer's Reports of Cases in the Court of Exchequer in Equity. Vol. 2, Part 3. Price 10s.

Report of Cases in the Court of Chancery in Ireland. By W. B. Drury, and T. W. Walsh, Barristers at Law, Esqrs. Vol. 1, Part 1. Price 7s. 6d.

Reports of Cases in the Rolls Court in Ireland. By M. R. Sausse and Scullig, Esqrs. Barristers at Law. Vol. 1, Part 1. Price 9s. 6d.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

February, 1838.

Carr, William Thomas, Blackburn, Lancaster.
Lloyd, Charles, 15, Great Ormond Street, Queen's Square.

Grueber, Thomas, Bread Street, Cheapside.

May, James Bowen, Lincoln's Inn Fields.

Kelly, James Birch, Inner Temple Lane.

Johnson, George, the younger, Temple.

Southce, Robert, Ely Place.

Faithful, Henry, Brighton.

Hodge, Richard Michell, Truro.

Brown, Henry Roberts, Great St. Helen's.

Walker, Thomas, Furnival's Inn.

[The List given in the last Monthly Record comprised the Members admitted in January.]

MASTERS EXTRAORDINARY IN CHANCERY.

From January 23, to February 16, 1838, both inclusive, with dates when gazetted.

Phipps, Samuel, Caincross, Gloucester. Jan. 23.

Newall, Wm. Nelson, Rochdale, Lancaster. Jan. 26.

Hill, Frederick, Helston, Cornwall. Jan. 30.

Ellman, Frederic, Battle, Sussex. Jan. 30.

James, Joseph Green, Walsall, Stafford. Jan. 30.

Pritt, Wm., Liverpool. Feb. 6.

Medwin, Pilfold, Horsham, Sussex. Feb. 9.

Buchanan, Chas., Nuneaton, Warwick. Feb. 9.

Toby, John, Exeter. Feb. 9.

Bentley, Wm., Hitchin, Hertford. Feb. 9.

Gem, George, Birmingham. Feb. 13.

Medwin, Pilfold, Horsham, Sussex. Feb. 13.

Jones, Chas., Alcester, Warwick. Feb. 13.

Hobbes, Wm. James, Stratford-upon-Avon. Feb. 13.

Adam, Wm. Hurd, Sheffield, York. Feb. 16.

Corles, Edward, Worcester. Feb. 16.

Banning, John Johnson, Liverpool. Feb. 16.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From January 23, to February 16, 1838, both inclusive, with dates when gazetted.

Williams, John, Frederick William Vaux, Edward Francis Feunell, and Henry Williams, Bedford Row, Attorneys and Solicitors. Feb. 6.

Branson, Thos., and A. C. Branson, Sheffield, York, Attorneys and Solicitors. Feb. 13.

BANKRUPTCIES SUPERSEDED,

From Jan. 23, to February 16, 1838, both inclusive,
with Dates when Gasetted.

Carthew, George, Redenhall with Harleston, Norfolk, Banker and Money Scrivener. Feb. 9.

BANKRUPTS.

From Jan. 23, to February 16, 1838, both inclusive,
with Dates when Gasetted.

Archer, Robert, Arundel Street, Strand, Wine Merchant. *Cannan*, Off. Ass.: *Sandell*, Bread Street, Cheapside. Jan. 30.

Atkinson, Thos. Whitlam, Manchester, Architect, Stone Dealer, Timber Merchant, and Builder. *Richards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. Feb. 9.

Appleyard, Wm., Clayton Heights, Bradford, York, Manufacturer and Grocer. *Adlington & Co.*, Bedford Row; *Wavell*, Halifax. Feb. 9.

Bunn, John Henry, Spicer Street, Spitalfields, Cabinet Maker. *Edwards*, Off. Ass.: *Watson*, Worship Street, Finsbury. Jan. 23.

Balguy, Bryan Thos., Derby, Money Scrivener. *Few & Co.*, Henrietta Street, Covent Garden: *Mousley & Co.*, Derby. Feb. 2.

Birley, George, Worcester, Perfumer and Toy Seller. *Clarke & Co.*, Lincoln's Inn Fields: *Elgie*, Worcester. Feb. 9.

Baldey, Frederick, Brighton, Sussex, Bookseller and Stationer. *Bennett*, Brighton; *Dar & Co.*, Lincoln's Inn Fields. Feb. 16.

Corneby, James, New Barn Farm, Compton, Southampton, Cattle Salesman. *Bowker*, Winchester. Jan. 23.

Cooper, George, Daventry, Northampton, Carrier. *Flewett*, Jewin Street, Cripplegate, and South Sea Chambers; *Cooke*, Northampton. Jan. 26.

Curtis, Edward, Newman's Row, Lincoln's Inn Fields, Tailor. *Foss*, Essex Street: *Green*, Off. Ass. Jan. 30.

Clegg, Elizabeth, Waithland, Rochdale, Lancaster, Cotton Spinner and Flannel Manufacturer. *Richards & Co.*, Lincoln's Inn Fields: *Barber*, Brighouse, near Halifax. Jan. 30.

Coleman, Edward, Leicester, Iron Founder and Engineer. *Toller*, Gray's Inn Square: *Toller*, Leicester. Feb. 2.

Chapman, Wm., Birmingham, Grocer. *Clarke & Co.*, Lincoln's Inn Fields: *Tyndall & Co.*, or *Yeates*, Birmingham. Feb. 2.

Coates, George, Hunton, York, Innkeeper. *Bedford*, Calthorpe Street; *Calvert*, Masham, York. Feb. 9.

Cooper, Henry Horton, West Bromwich, Stafford, Retailer of Beer, and Wharfinger. *Whitehouse*, Quality Court, Chancery Lane: *Holland*, West Bromwich. Feb. 13.

Chittenden, Jeremiah, jun., Three Tuns Court, Southwark, and of Croydon, Surrey, Hop Factor and Maltster. *Johnson*, Off. Ass.; *Dyer*, Chancery Lane. Feb. 16.

Coles, Wm., Taunton, Somerset, Shopkeeper. *Clarke & Co.*, Lincoln's Inn Fields: *Hancock*, Taunton. Feb. 16.

Dewhurst, Thos., Manchester, Printseller and

Bookseller. *Johnson*, Off. Ass.: *Bowden & Co.*, Aldermanbury. Jan. 23.

Dodd, Edward, Berners Street, Oxford Street, Harp Manufacturer. *Goldsmid*, Off. Ass.: *Bodman*, Dowgate Hill. Feb. 2.

Dalton, Henry Robert Dolman, Bolton-le-Moors, Lancaster, Distiller. *Walter & Co.*, Symond's Inn: *Tolson*, Bradford, Yorkshire. Feb. 6.

Deen, James, Saville Row, Burlington Gardens, Tailor. *Abbott*, Off. Ass.: *Stafford*, Buckingham Street, Strand. Feb. 9.

Dyball, Edward, Norwich, Gun Maker. *Taylor & Co.*, Bedford Row: *Barlow & Co.*; Birmingham: *Dalrymple*, Norwich. Feb. 13.

Deakin, Francis, Birmingham, Timber Merchant. *Richards & Co.*, or *James*, Birmingham; *Church*, Great James Street. Feb. 13.

Edmunds, Samuel, Percival Street, Northampton Square, Provision Agent. *Clark*, Off. Ass.: *Bowden & Co.*, Aldermanbury. Jan. 23.

Eyton, Beresford, Northumberland Street, Strand, Navy Agent and Banker. *Goldsmid*, Off. Ass.: *Clayton*, Lancaster Place, Strand. Jan. 26.

Evans, Cecil, Spout Lane, near Wellington, Salop, Corn Factor. *Blackstock & Co.*, Temple; *Watson*, Shrewsbury. Jan. 30.

Elphick, Samuel, Rosemary Lane, Middlesex, Victualler. *Turghand*, Off. Ass.; *Martineau & Co.*, Carey Street. Feb. 9.

Foster, Ann, Barton-hill, York, Innkeeper. *Ord*, York: *Harvey & Co.*, Lincoln's Inn Fields. Jan. 26.

Fowler, Wm., Aston-juxta-Birmingham, Brick-maker and Victualler. *Holmes*, Great Knight Rider Street, Doctors' Commons. *Yeates*, Birmingham. Jan. 30.

Foulkes, Thomas, Bowbridge, Rodborough, Gloucester, Coal Merchant and Grocer. *Newton & Co.*, South Square, Gray's Inn: *Pearce*, Minchinhampton. Feb. 2.

Green, Wm., Sheffield, Ironmonger, Whitesmith and Wheelwright. *Skidmore*, Sheffield: *Johnson & Co.*, Temple. Jan. 23.

Gawthorp, Samuel Tharlstone Wade, Wakefield, York, Corn Factor. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Dunning & Co.*, Leeds. Jan. 26.

Grover, Robert, Brighton, Cabinet Maker. *Dempster*, Brighton. Feb. 16.

Hellyer, Thomas, Saint John Street, West Smithfield, General Tool, File, and Metal Warehousman. *Gibson*, Off. Ass.; *Strutt*, South Square, Gray's Inn. Jan. 23.

Hayes, Christopher, jun., Liverpool, Ship Builder and Block Maker. *Aorris & Co.*, Bartlett's Buildings, Holborn: *Toumin*, Liverpool. Jan. 30.

Haines, Geo., Kilsby, Northampton, Grocer and Draper. *Britten*, Northampton; *Blower & Co.*, Lincoln's Inn Fields. Jan. 30.

Holt, Wm. Crawshaw, and Wm. George Thomas, Kingscross, Halifax, York, Iron Founders. *Stansfeld & Co.*, Halifax: *Wiglesworth & Co.*, Gray's Inn Square. Feb. 2.

Hirst, Wm., Leeds, York, Merchant and Cloth Manufacturer. *Snowden*, Leeds: *Lambert & Co.*, Raymond Buildings, Gray's Inn. Feb. 6.

Hawkins, Alexander, Chiswell Street, Old Street, Middlesex, Ironmonger. *Clark*, Old Broad Street. Jan. 23.

Holt, Thos. Lyttleton, jun., Crane Court, Fleet Street, and Bell's Buildings, Salisbury Square, Fleet Street, Printer and Publisher. *Belcher*, Off. Ass.; *Branscomb*, Wine Office Court, Fleet Street. Feb. 16.

Howell, John, late of Worcester, Corn, Cheese, and Bacon Dealer, and Seedsman: now of Banbury, Oxford, Schoolmaster. *Leadbitter*, Staple Inn; *Smith*, Worcester. Feb. 16.

Inglis, James, Basinghall Street, Merchant and Commission Agent. *Whitmore*, Off. Ass.; *Allen & Co.*, Queen Street, Cheapside. Feb. 13.

Jones, Thomas, High Street, Shadwell, Slop Seller. *Pennell*, Off. Ass.; *Templer & Co.*, Great Tower Street. Jan. 26.

James, John, Southampton Street, Strand, Woollen Draper and Mercer. *Gibson*, Off. Ass. *Wilde & Co.*, College Hill. Feb. 2.

Jones, Evan, Swansea, Glamorgan, Linen and Woollen Draper. *Walters*, Swansea. Feb. 6.

Jenkins, Thos., Brecon, Maltster. *Watkins*, Brecon: *Gregory & Co.*, Clements's Inn. Feb. 13.

Jerom, Isaac, Montague Mews, Montague Square, Livery Stable Keeper. *Graham*, Off. Ass.; *Turner*, Clifford's Inn. Feb. 16.

Lear, Charles, Exeter, Innkeeper. *James & Co.*, Basinghall Street: *Terrall*, Exeter. Feb. 16.

Mac Knight, Rob., Birmingham, Hawker. *Parker & Co.*, South Square, Gray's Inn: *Cope*, Birmingham. Feb. 2.

Metivier, Carey Henry, Wotton-under-Edge, Gloucester, Cloth Factor. *Ball*, Bedford Row; *Weight*, Wotton-under-Edge. Feb. 6.

Moseley, Thomas, Macclesfield, Chester, Coach Proprietor and Victualler. *Lake & Co.*, Basinghall Street: *Foster*, Manchester. Feb. 9.

Moore, John, and Edward Raisbeck, Thornhill Lees Forge, Dewsbury, York, Iron Founders. *Jaques & Co.*, Ely Place; *Watts*, Dewsbury. Feb. 13.

Pickaley, Joseph, Bolton-le-Moors, Lancaster, Joiner and Builder. *Milne & Co.*, Temple: *Taylor*, Bolton-le-Moors. Feb. 6.

Parker, Frederick, Northampton, Upholsterer and Paper Hanger. *Blackstock & Co.*, Temple: *Cooke*, Northampton. Feb. 13.

Quarrel, John, and Richard Wright, Cheltenham, Bricklayers. *Gyde*, Cheltenham: *Blower & Co.*, Lincoln's Inn Fields. Feb. 2.

Reid, John, Liverpool, Merchant. *Cuwelje & Co.*, Southampton Buildings, Chancery Lane: *Lodge & Co.*, Preston, or *Littledale & Co.*, Liverpool. Feb. 2.

Roberts, Thos., Gillingham, Dorset, Dealer in Sheep and Cattle. *Dean*, Guilford Street: *Dashwood*, Sturminster Newton. Feb. 6.

Russell, John Henry, Bruton Street, Tailor. *Green*, Off. Ass.; *Parnther & Co.*, London Street, Fenchurch Street. Feb. 9.

Radcliffe, John, Little Smeaton, York, Miller. *Clough & Co.*, Pontefract; *Lake & Co.*, Basinghall Street. Feb. 9.

Sanders, Thos. Alexander, Ryde, Isle of Wight, Southampton, Builder & Brick Maker. *Bull*, Ryde; *Rhodes & Co.*, Chancery Lane. Feb. 16.

Sisley, James, Margate, Kent, Carpenter. *Brooke & Co.*, Margate; *Willett & Co.*, Essex Street. Feb. 16.

Smith, Charles Vincent, and Robert Edwin Goulding, Tottenham Court Road, Linen Drapers. *Alsager*, Off. Ass.; Messrs. *Sole*, Aldermanbury. Jan. 23.

Stone, Richard, Thame, Oxfordshire, Carpenter. *Widdows*, Copthall Court, Throgmorton Street. Jan. 23.

Smith, John, Leeds, York, Joiner and Carpenter. *Battye & Co.*, Chancery Lane; *Naylor*, Leeds. Jan. 23.

Smith, Joseph, Sheffield, York, Stone Mason; Jacob Bridge, jun., of Whittington, near Chesterfield, Derby, and George Smith of Chesterfield; Road Maker and Excavator. *Fidley*, Serjeant's Inn, Fleet Street; *Rayner & Co.*, Sheffield. Jan. 26.

Skinner, Samuel, Greenham, Thatcham, Berks, Brewer. *Pinniger*, Newbury; *Parker*, St. Paul's Church Yard. Jan. 30.

Spence, Wm., Leeds, York, Corn Miller. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Dunning & Co.*, Leeds. Feb. 16.

Taylor, David, Wike, Bristol, York, Worsted Manufacturer. *Battye & Co.*, Chancery Lane; *Higham*, Brighouse, near Halifax. Jan. 23.

Tuck, Wm., Hoddesden, Hertford, Butcher. *Groom*, Off. Ass.; *Collison*, Farnival's Inn. Feb. 2.

Taylor, Joseph, Liverpool, Brewer. *Blackstock & Co.*, Temple; *Booth*, Liverpool. Feb. 2.

Twells, John Thomas, Tamworth, Stafford, Undertaker; *Parker*, St. Paul's Churchyard. Feb. 13.

Welden, Thos., Leckhampton, Gloucester, Brick-maker. *Gyde*, Cheltenham; *Blower & Co.*, Eincoln's Inn Fields. Jan. 23.

Williams, Margaret, Bontnewydd, Llanbebyl, Carnarvon, Shopkeeper. *Weeks & Co.*, Cook's Court, Lincoln's Inn Fields; *Williams*, Carnarvon. Feb. 2.

Watson, John, and James Watson, Crawford Street, Bryanstone Square, Linen Drapers. *Lackington*, Off. Ass.; *Lythgoe & Co.*, Essex Street. Feb. 13.

Woolley, Peter, Ross, Hereford, Tailor and Draper. *Smith & Co.*, Southampton Street, Bloomsbury; *Hall*, Ross. Feb. 13.

Warren, Henry Richard, Liverpool, Common Brewer. *Mallaby*, Liverpool; *Westmacott*, Gray's Inn. Feb. 13.

PRICES OF STOCKS.

Tuesday, Feb. 20, 1838.

Bank Stock, div. 8 per Cent.	- - -	205 $\frac{1}{4}$
3 per Cent. Reduced	- - -	93 $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{2}$
3 per Cent. Consols. Anns.	92 $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{2}$	
3 $\frac{1}{2}$ per Cent. Reduced Annuities	- -	101 $\frac{1}{2}$ $\frac{1}{4}$
New 3 $\frac{1}{2}$ per Cent. Annuities	- -	100 $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{2}$
Long Annuities	- - - - -	15 $\frac{1}{2}$ $\frac{1}{4}$
Annuities for 30 years [expire 10th Oct. 1859]		15 $\frac{1}{4}$
Ditto	- - - - -	[Jan. 5, 1860] 14 $\frac{1}{2}$
3 per Cent. Consols. for Account, 27th Feb.	92 $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{2}$	
India Stock for Feb. 27	- - - - -	264
Exchequer Bills, £1000 at 2 $\frac{1}{2}$ d.	-	56s. a 54s. pm.
Ditto	-	500l. at 2 $\frac{1}{2}$ d. - 56s. a 54s. pm.
Ditto	-	Small - 56s. to 54s. pm.

* * The Stocks in which there was "Nothing done," or, no business transacted, are omitted in the above list.

The Legal Observer.

SATURDAY, MARCH 3, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamur.

HORAT.

SABBATH LEGISLATION.

In considering the subject of legislating for the better observance of the Sunday, it will be well to state the existing law on the subject, which we shall do from Robinson's Magistrate's Pocket Book :—

1. All persons, not having a just and reasonable excuse, neglecting to go to church (or some other place of religious worship allowed by the Toleration act), every Sunday, Penalty 1s. for every offence, to the poor; to be levied by the churchwardens by distress, by warrant of one justice, within one month; in default, commitment till paid. 1 Eliz. c. 2, s. 14, 24; 3 Jac. c. 4, s. 27, 28.

2. Persons assembling on the Lord's day, *out of their own parishes*, for any sport or pastime; or bull baiting, bear baiting, &c. within their own parishes: Penalty 3s. 4d. to the poor for every offence; to be levied by the constable and churchwardens by distress. In default of distress, offender to be set publicly in the stocks for three hours. 1 J. 1 W. on view or confession. 1 C. 1, c. 1.

3. Carriers, drovers, waggoners, drivers of vans, &c., travelling on the Lord's day, penalty 20s. within six months, on view or confession. All to the poor (except that the justice may reward the informer with part of the penalty, not exceeding one-third.) 3 C. 1, c. 1.

4. Butcher killing or selling any victuals on the Lord's day, penalty 6s. 8d. within six months by distress, to the poor (except as above). Id.

5. Drovers, horse coursers, waggoners, butchers, higglers, or their servants, travelling or coming into their inn or lodgings on the Lord's day, penalty 20s. For want
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of distress, the offender to be set in the stocks for two hours. 29 C. 2, c. 7, s. 2.

6. Tradesmen, artificers, workmen, labourers, or others, exercising the labour, business, or work of their ordinary callings on the Lord's day (works of necessity and charity excepted), penalty 5s. on every offender above fourteen years of age. To be recovered as above. (Id. s. 1.) Act not to extend to the dressing of meat in families, dressing or selling meat in inns, cook-shops, and victualling houses, the carrying or selling of milk before nine o'clock in the morning or after four in the afternoon. Id. s. 3.

7. Crying, showing, or exposing to sale any wares, merchandizes, fruits, herbs, goods, or chattels whatsoever on the Lord's day, penalty, forfeiture of the same. (Id. s. 1.) Except milk, *ut supra*; and except mackerel, which may be sold before or after divine service. 10 & 11 W. 3, c. 24, s. 14.

8. Using, employing, or travelling on the Lord's day, with any boat, wherry, lighter, or barge (unless allowed by a justice of the peace, &c. on extraordinary occasions, and except forty wherry-men who ply on the Thames on Sunday between Vauxhall and Limehouse), penalty 5s. To be recovered as above. Id.

So that it would seem that, according to the existing law, if it were enforced, some violations of the Sabbath might be punished; but it is to be observed that all these statutes are of a very old date, that they are partial in their operation, and have in fact become obsolete. Let us, therefore, consider the subsequent endeavours to legislate on this subject.

The bill of Sir Andrew Agnew we always considered an impracticable measure. It ran counter to many of the fixed habits

and customs of the English people; and, had it passed into law, we conceive it would have been found impossible to have carried it into execution. But we have always been in favour of some measure which should give every person the power of passing the first day of the week in such manner as his conscience dictates. We cannot push legislation on this subject farther than this: we cannot force people to go to church, or even think on religious subjects; but we can give them the option of doing either or both. At present, to many classes of persons the going to church is denied. If owing to the rivalry or practice of trade one man keeps his shop open, or works at his business, the temptation for others in the same trade or business to do the like is generally too great to be withstood. In this way a large class of persons are compelled to work the whole seven days, and

"Sunday brings no Sabbath-day to them."

This hardship falls chiefly upon a large class of inferiors—shopmen and shopwomen, who are obliged often to work in the absence of their masters, who in fact are making holiday, and enjoying the profits of the ceaseless labour of those they employ.

We wish to look upon this subject in a practical light. We might take a higher stand, but we choose only to speak to the interests of those affected by a reasonable Sunday bill. We would fain have it supported from better reasons than that of mere worldly prudence; but we are quite satisfied that we can successfully address ourselves to men actuated only by this. It is for the general interest of the community, as it is for the particular interest of each individual, to set aside one day in seven, if not for devotion to his Maker, at any rate for rest and quiet to his mind and body—for calling home his thoughts—for considering his true position: his past life, his future prospects,—laying fallow for a season; and if not anxious to gain "the innocence of the dove," at any rate to obtain "the wisdom of the serpent." We seriously believe that he that does this will be a wiser, a better, and a wealthier man than he who goes moiling on in the same perpetual round from one year's end to the other; and we especially address this to our younger readers. At the same time it is strictly in conformity, as well with these sentiments, as in our opinion (after some search and consideration) with the strictest rule of the scriptures, to admit of works of necessity.

With these feelings we awaited with

interest, the printing of Mr. Plumtre's bill "for the suppression of trading on the Lord's day, commonly called Sunday," and we are happy to say that with such alterations as it will receive in committee, we can cordially support it; and we shall now lay the enacting clauses before our readers, believing that they carry out the opinions which we have expressed.

1. That no person on the Lord's day shall do or hire, or employ any person to do, any manner of labour, or any work in the way of trade or business, or keep open shop, or hold or assist in holding any fair or market, or buy or sell, or cry, offer or expose for sale, or receive or deliver in the way of trade or business, or in the way of his or her ordinary calling, or cause to be bought or sold, or cried, offered or exposed for sale, or received or delivered in manner aforesaid, any goods, animal effects, or thing, or make any contract in the way of trade or business or otherwise, or do or permit any thing prohibited, or for the doing or permitting of which any forfeiture is imposed by any provision of this act.

2. That every such doing or hiring, or employing any person to do any such labour, work, calling, trade or business, or keeping open shop, or holding or assisting in holding any such fair or market, or buying or selling, or causing to be bought or sold, or crying, offering or exposing for sale, or receiving, delivering or causing to be bought or sold, or cried, offered or exposed for sale, or received or delivered, or making any such contract, or doing or permitting any thing prohibited, or for the doing or permitting of which any forfeiture is imposed by any provision of this act, shall be a separate offence.

3. That every person who upon the Lord's day shall do any of the things hereinbefore prohibited, shall forfeit a sum not less than *five shillings* nor more than *twenty shillings* for the first offence, and not less than *twenty shillings* nor more than *forty shillings* for the second offence, and not less than *forty shillings* nor more than *five pounds* for every subsequent offence; and in addition to such forfeitures, every sale or contract made or entered into on the Lord's day shall be utterly void and of none effect.

4. That every person who shall keep open any shop or place for trading on the Lord's day shall forfeit the further sum of *twenty shillings* for every hour beyond the first hour during which he or she shall keep open any such shop or place.

5. Constables, &c. may seize certain articles exposed for sale on the Lord's day.

6. That every person who shall resist, assault or obstruct any person duly employed in enforcing the provisions of this act, shall forfeit any sum not exceeding *ten pounds*.

7. That any justice of the peace having jurisdiction over the place where the offence shall be committed, shall and may upon his view convict any person offending against this act,

and assess such forfeiture as in and by this act is provided for such offence.

8. Recovery and application of forfeitures.

9. For compelling the attendance of witnesses.

10. Information to be made within three months.

11. That every person who shall think himself or herself aggrieved by any summons, order, judgment or determination of any justice or justices of the peace made in any of the cases above-mentioned, may appeal to the justices of the peace of the county, riding, city, town or place in which such order, judgment or determination shall have taken place, at their next General Quarter Sessions, first giving or causing to be given *ten days'* notice at the least in writing of his or her intention to bring such appeal and the grounds thereof to the justice upon whose view, or to the person or persons upon whose information or complaint, the said order, judgment or determination may have been made, and to the person or persons whose act or acts is or are appealed against, and within *two days* after such notice entering into a recognizance in the sum of *twenty pounds* before some justice of the peace of the same county, riding, city, town or place conditioned for prosecuting such appeal, and to abide the order thereon, and to pay such costs as shall be awarded by the justices at such Quarter sessions; and the said justices at such quarter sessions, upon the proof of such notice given as aforesaid, and of the entering into such recognizance, shall hear and determine the grounds of such appeal in a summary way, and award such costs to the party appealing or appealed against as the said justices shall think proper; and the said justices may, if they see cause, mitigate any forfeiture, and may order any money to be returned which shall be levied in pursuance of such order, judgment or determination.

12. Limiting amount of damage to be recovered where convictions are quashed upon appeal.

13. Limitation of actions. Venue local. General issue may be pleaded.

14. Ecclesiastical jurisdiction not altered.

15. That nothing in this act contained shall extend to any person selling, buying, delivering or receiving milk before of the clock in the morning, or between the hours of and in the afternoon, or to any person selling, buying, delivering and receiving medicine, or to any person selling, buying, delivering or receiving dressed meat, liquor or other provisions within hotels, coffee-houses, inns, cook-shops, ale-houses, beer-houses, or other houses for the sale of victuals, to be consumed in and upon the premises, by any traveller or by any person or persons who shall have lodged and slept on the premises during the preceding night, or between the hours of and in the afternoon, and and in the evening, by any person or persons who shall actually and *bona fide* then victual at the same, and shall not resort thereto for the mere purpose of drinking or tipping, or to any person

selling, buying, delivering or receiving beer or other malt liquor between the hours of in the afternoon and in the evening, the same or any part thereof not to be consumed in or upon the premises of the vendor or vendors thereof.

16. That nothing in this act contained shall extend to works of piety, charity or necessity.

NOTES ON EQUITY.

COSTS ON RAILWAY PETITIONS.

THE following case decides a new point as to costs on petitions in railway matters, now of very common occurrence :

The petitioner, Thomas Joseph Trafford, was, by virtue of his marriage settlement, tenant for life of considerable estates in the parish of Trafford and elsewhere, in the county of Lancaster, subject to a term of five hundred years, for securing portions for his brother and sisters. The trustees of that term, having borrowed several sums, amounting to 6666*l.* 13*s.* 4*d.*, for the purposes of the settlement, mortgaged the premises comprised in the term to secure the repayment of that sum. By the stat. 7 G. 4, c. 49, s. 39, the Manchester and Liverpool Railway Company are empowered to purchase lands, tenements, and hereditaments for the purposes of that undertaking, of corporations, tenants for life, tenants in tail, &c. Under the 61st section of the act, the money to be paid for the purchase of any lands, &c. of any corporation, tenant for life, &c., shall, if it exceed 200*l.*, be paid into the Bank of England, in the name and with the privity of the Accountant General of the Court of Exchequer, according to the provisions of the statute 1 G. 4, c. 35, there to remain until the same shall, by the order of the Court of Exchequer, made upon the petition of the party who would have been entitled to the rents and profits of the lands to be purchased, be applied either in the purchase or redemption of the land tax, or in the discharge of any debt or other incumbrance affecting the said lands, or affecting other lands standing settled to the same uses; or until the same shall by a like order be laid out in the purchase of other lands to be settled to the like uses, as the lands which shall be so purchased stood settled or limited; and in the mean time the money may by like order of the Court be invested in the 3*l.* per cent. reduced annuities, &c. The 66th section enacts, that where, by reason of any disability or incapacity of any party entitled

to the lands, &c. to be taken by the company, the purchase money shall be required to be paid into the Bank of England, to be applied in the purchase of other lands, to be settled to the like uses, it shall be lawful for the Court to order the expenses of such purchases, together with the necessary costs and charges of obtaining such order, to be paid by the company out of the monies to be received by virtue of the act. The petitioner having sold some part of the settled lands to the company under the provisions of this act, the company paid the purchase money, amounting to 2166*l.* into the Bank of England, where the same was now standing in the name of the Accountant General. The mortgagee of the term for five hundred years having consented to receive the above mentioned sum of 2166*l.* in part discharge of his mortgage debt of 6666*l.* 13*s.* 4*d.*, the prayer of the petitioner was, that the Accountant General might be directed to pay over to him that sum, and that the company might be ordered to pay the expenses of this petition, together with the necessary costs and charges of obtaining the order to be made on this petition, and of the other parties appearing.

The Lord Chief Baron said, that however desirous he might be to order the costs prayed for, he doubted whether, under the words of the act of parliament, he had authority to do so. He fully agreed with Lord Lyndhurst, that cases of this nature came within the spirit of the act; but he thought that that consideration alone, without stronger expressions on the part of the legislature, would hardly authorize him to make such an order. He would, however, reserve the question of costs, and would, in the mean time, mention the subject to Lord Lyndhurst.—On a subsequent day, Mr. Stinton applied for the judgment of the Court upon the point reserved, when the Lord Chief Baron stated, that he had consulted Lord Lyndhurst on the subject, and that he should follow the decision in *Es parte Northwick*. His Lordship therefore ordered that the costs, as prayed by the petition, and likewise the costs of this application, should be paid by the company. *Es parte Trafford*, 2 Y. & C. 522.

CHANGES IN THE LAW IN THE PRESENT SESSION OF PARLIAMENT, 1 VICT.

No. III.

TRADING OF CLERGYMEN.

1 Vict. c. 10.

IN our last number (p. 317) we reported the late case of *Hall v. Franklin*, in which the Court of Exchequer held that Joint Stock Banking Companies are within the 57 G. 3, c. 39, whereby spiritual persons are forbidden to trade or deal; and, therefore, that contracts made with a Banking Company, in which there are clergymen, are void.

The following is the act just passed to render valid the existing contracts, or such as may be entered into before the end of the next Session of Parliament, which by the decision referred to would otherwise have been void. In actions where the defendants have pleaded before 6th February, 1838, such defendants are to be entitled to their full costs.

An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships.

[20th February, 1838.]

Whereas divers associations and copartnerships, consisting of more than six members or shareholders, have from time to time been formed for the purpose of being engaged in and carrying on the business of banking and divers other trades and dealings for gain and profit, and have accordingly for some time past been and now are engaged in carrying on the same by means of boards of directors or managers, committees or other officers, acting on behalf of all the members or shareholders of or persons otherwise interested in such associations or copartnerships: And whereas divers spiritual persons, having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships, have been and are members or shareholders of or otherwise interested in divers of such associations and copartnerships, and it has not been commonly known or understood that the holding of such shares or interests by such spiritual persons was contrary to law: And whereas it is expedient to render legal and valid all contracts entered into by such associations or copartnerships, or which for a limited time may be entered into by them, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders or otherwise interested as aforesaid; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same—

1. *No association or copartnership, or contract entered into by any of them, to be illegal or void by reason only of spiritual persons being members of such association or copartnership.*—That no such association or copartnership already formed, or which may be formed at any time before the end of the next session of parliament, nor any contract either as between the members, partners, or shareholders composing such association or copartnership for the purposes thereof, or as between such association or copartnership and other persons, heretofore entered into, or which before the end of the next session of parliament shall be entered into, by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, shareholder, manager, or director of or otherwise interested in the same, but all such associations and copartnerships shall have the same validity and all such contracts shall and may be enforced in the same manner to all intents and purposes as if no such spiritual person had been or was a member, partner, shareholder, manager, or director of or interested in such association or copartnership.

2. *In all actions and suits the defendant to be entitled to taxed costs, and the Court may make order for further costs.*—And be it further enacted, that in all actions and suits which shall have been brought or instituted by or on behalf of any such association or copartnership, in case any defendant therein shall before the sixth day of February one thousand eight hundred and thirty-eight, by plea or otherwise, have insisted on the invalidity of any contract thereby sought to be enforced by reason of any such spiritual person as aforesaid being or having been a member or shareholder in such association or copartnership, such defendant shall be entitled to the full costs of such plea or other defence, to be paid by the plaintiff, and to be taxed as the Court in which the said action or suit shall be depending, or any Judge thereof, shall direct; and in order fully to indemnify such defendant it shall be lawful for such Court or Judge to order the plaintiff to pay to him such further costs (if any) of the said action or suit as the justice of the case may require.

3. *Act may be repealed this session.*—And be it further enacted, that this act may be repealed or altered by any other act in this present session of parliament.

NEW BILLS IN PARLIAMENT.

WITNESSES OF BRIBERY AT ELECTIONS.

This is a bill "more effectually to compel witnesses to make a full disclosure of bribery and corruption in the election of members to serve in parliament, and to indemnify such witnesses." It recites that it is expedient that more effectual means should be adopted for

the prevention, detection and punishment of bribery and corruption in the election of members to serve in parliament. The proposed enactments are,

1. That from and after the passing of this act, no person whatsoever shall be entitled to object to be examined as a witness, or to answer any question that shall be put to him before the house of commons, or any committee, select or otherwise, thereof, or in any action or prosecution before any court of justice, touching any corrupt or illegal practices whatsoever, committed or alleged to have been committed at or with reference to any election of any member or members to serve in parliament, on the ground that such examination or the answer to such question may criminate himself, or that he is a party to any petition relating to any such election;^a provided nevertheless, that no such examination or answer shall at any time afterwards be given in evidence against any such person in the house of commons, or in any court, committee or place whatsoever, save and except on an indictment for perjury against such person; and if the said house, or any committee or court before which he shall have been examined as aforesaid, shall be satisfied with the answers given by such person, he shall, if such answers shall implicate him in any such corrupt or illegal practices, be entitled to receive, gratis, a certificate thereof under the hand of the speaker of said house, or of the chairman of such committee, or of the presiding judge in any such court, as the case may be; which certificate shall be a full discharge of all penalties, disabilities and punishments which he shall or may be liable to for any offence in which such examination or answers shall or may implicate him.

2. That if any person shall wilfully make any oath or affirmation falsely, or give any false evidence before the house of commons, or any committee, select or otherwise, thereof, or in any action or prosecution before any court of justice relating to any of the offences aforesaid, and be thereof convicted, he shall suffer the pains and penalties of perjury, and be for ever disabled to vote at any such election or to sit in parliament; and the prosecutor in any indictment for any such offence shall be entitled to his costs, if the court before whom such indictment shall be tried shall think fit to allow them.

3. That no person shall be liable to any punishment, penalty, or incapacity, or any indictment or information under this act, unless proceedings shall be had against him for such offence within twelve calendar months next after such offence shall have been committed.

INCLOSURE OF OPEN FIELDS.

This is a bill to amend an act of the sixth and seventh years of King William the fourth,

^a We presume these disclosures will not extend to the legal advisers of the parties accused. Ep.

for facilitating the inclosure of open and arable fields in England and Wales." It recites the 6 & 7 Will. 4, c. 115, whereby provisions were made for the inclosure of open and common arable fields (including untitled slips or balks therein) and of open and common meadow or pasture lands or fields in any parish, township or place in England or Wales known by metes and bounds, or occupied according to known and legal rights, *except open or common meadow or pasture lands or fields situate and being within ten miles of the city of London, or any open or common meadow or pasture lands or fields situate and being within one mile of any city or town of 5,000 inhabitants, or within one mile and a half of any city or town of 15,000 inhabitants or within two miles of any city or town of 30,000 inhabitants, or within two miles and a half of any city or town of 70,000, inhabitants or within three miles of any city or town of 100,000 inhabitants; and to extinguish the right of intercommonage which should exist, as well over as in respect of the lands so to be inclosed; and it was thereby enacted, that nothing therein contained should in any case authorize the inclosure of any waste whatsoever, whether the soil thereof should or should not be vested in the lord of any manor, and whether with or without the assent of the lord of such manor.*

And reciting that inclosures have been commenced, and to a certain extent proceeded with, under the provisions of the said act, but doubts are entertained as to the extent of the said act, and (having reference to the very beneficial objects contemplated thereby) it is desirable that such doubts should be removed, and the powers thereof extended, that all proceedings under the said act, in relation to land considered to be within its operation, should be confirmed, and that further provisions should be made in regard to the matters aforesaid;

It is therefore proposed to be enacted:

1. That the hereinbefore in part recited act of 6 & 7 William 4, was meant and intended to apply, and that the same shall be adjudged and construed to apply and extend not only to open field lands, but to all arable, meadow and pasture lands and fields, common meadows, common pastures, commons, and other commonable and waste lands and grounds; and that all proceedings which have been had under the said act, in regard to any such arable, meadow and pasture lands and fields, common meadows, common pastures, commons and other commonable and waste lands and grounds as aforesaid, shall be and the same are hereby confirmed and declared to be valid and effectual to all intents and purposes whatsoever.

2. That on any inclosure under the said recited act and this act, or either of them, the consent of the lord or lady, lords or ladies for the time being of any manor of which any lands proposed to be inclosed shall be parcel, and who shall be the owner or owners of the soil of such lands or any of them, shall although he, she or they shall have no other estate, interest or right in, to or over such lands, be necessary to the validity of any such inclosure;

and where any such manor shall be vested in possession in any ecclesiastical or other corporation, or in any tenant for life or in tail, or for any other partial or qualified estate or interest, or in any feoffees or trustees for charitable or other purposes, the consent of such corporation or other persons, or of the husband, guardian or committee of the estate of any such persons who shall be a married woman, infant, idiot or lunatic, shall be sufficient for the purposes aforesaid; and where such consent shall be requisite, the same shall be signified in writing at any time before the completion of the inclosure.

3. That in all cases in which such consent shall have been given as aforesaid, it shall be lawful for the commissioner or commissioners who shall be or shall have been appointed for the purpose of effecting any inclosure under the said recited act and this act, or either of them, if he or they shall think fit, and also for the persons who, under the provisions of the said recited act, shall, without the intervention of commissioners agree to make any such inclosure as aforesaid, to make any allotment in respect of the right of soil of the lord or lady of the manor for the time being in the lands proposed to be inclosed, or any of them, or to direct any compensation to be made; in respect of such right of soil, and by whom and in what manner such compensation shall be paid; and any such allotment shall be considered to all intents and purposes, and in regard to the limitations thereof and the title thereto, and to all other provisions and matters whatever, as an allotment made under the provisions of the said recited act, and as if such provisions were here repeated and in express terms applied to allotments for right of soil; and that any such compensation as aforesaid shall be paid and applied in the manner directed by the said recited act in regard to compensations for rights under the provisions of the same act; and that all money compensations payable under the said recited act and under this act, or either of them, shall be considered as a part of the expenses of the persons by whom the same shall be payable of the inclosure to which the same shall apply, and shall be raisable in the same manner as the general expenses of such inclosure are made raisable by the said recited act.

4. That all disputes and differences in relation to any allotment or compensation in respect of right of soil shall be determined in the manner provided in the said recited act in respect to allotments to be made under the same act.

5. And reciting that doubts have been entertained whether the power to make exchanges which is contained in the said recited act, applies to lands which are not adjoining to open and common lands or fields to be inclosed under the same act; it is therefore proposed to be enacted, that on any inclosure to be made under the said recited act and this act or either of them, any lands, tenements or hereditaments within any parish, township or place in which any lands proposed to be al-

lotted and inclosed shall be situate, shall be adjudged and considered to be lands, tenements or hereditaments which may be set out allotted and awarded by way of exchange under the provisions for that purpose contained in the said recited act.

6. That it shall be lawful for the commissioner or commissioners who shall be or shall have been appointed for the purpose of effecting any inclosure under the said recited act and this act, or either of them, with the consent in writing of the proprietor or proprietors of any old inclosed lands, tenements or hereditaments within the parish, township or place in which the lands to be allotted and inclosed are situated, or any of them, whether such proprietor or proprietors shall be a body or bodies politic, corporate or collegiate, corporation aggregate or sole, rector, parson or vicar, or other ecclesiastical person or persons or a tenant or tenants in fee simple or for life or in fee tail, special or general, or by the courtesy of England, or for years determinable on any life or lives, by and with the consent of the lessor or lessors, but not otherwise, or with the consent of the guardians, husbands, committees or attorneys of or acting for any such proprietor or proprietors, who shall be respectively infants, femes covert, idiots, lunatics, or under any other legal disability, or who shall be beyond the seas or otherwise disabled to act for themselves, himself or herself, or of the trustees or feoffees for charitable, parochial or other uses, or of the person or persons having power to sell and dispose of such old inclosed lands, tenements or hereditaments (such consent to be testified in writing under the common seal of the body politic, corporate or collegiate, and under the hands of the other consenting parties respectively), to consider such old inclosed lands, tenements and hereditaments as allotable and part and parcel of the lands, tenements and hereditaments authorized to be allotted and inclosed by virtue of the said recited act and of this act, and to divide and allot the same accordingly: and such allowance shall be made to the respective proprietors of such old inclosed lands, tenements and hereditaments, on account of the situation or other beneficial circumstances thereof, as the said commissioner or commissioners shall adjudge to be just and reasonable; and the said commissioner or commissioners shall set out, allot and award unto and for the respective proprietors of such old inclosed lands, tenements, and hereditaments in lieu thereof, so much and such part and parts of the lands, tenements and hereditaments to be allotted and inclosed under the said recited act and this act, as the said commissioner or commissioners shall think reasonable and just; provided nevertheless, that no old inclosed lands, tenements and hereditaments, held in right of any church, chapel or other ecclesiastical benefice, shall be considered as allotable, without the consent, testified as aforesaid, of the patron thereof, and of the bishop of the diocese in which such benefice shall be situated.

7. And (subject and without prejudice to the

right of appeal contained in the said recited act,) that all awards that shall be made in pursuance of the said recited act and of this act, or either of them, shall be conclusive evidence that the provisions of the said acts have in all respects been complied with, and that all necessary consents have been given, and no other evidence than such awards shall be requisite to establish the title of parties, at whose instance any inclosure shall be made under the said acts, or either of them, and the value of their interests, or the title or interests of any lord or lords, lady or ladies of any manor or manors.

8. That all and every the clauses, provisions and enactments contained in the said recited act, or such of them as are applicable to and consistent with the purposes and object of this act, shall be in full force and effect for carrying into effect the allotments, divisions, inclosures and exchanges hereby authorised to be made as fully and effectually as if such clauses, provisions and enactments had been herein repeated and re-enacted, and had been made part of this act, with such alterations and variations as would adapt them and render them applicable to the objects and purposes of this act.

ON THE MODE OF EXAMINING ARTICLED CLERKS.

"AN OLD PRACTITIONER" has written us a long and able letter, the general bearing of which (though probably not so intended) is unfavourable to the course pursued by the Examiners; but as our correspondent has evidently mistaken their intentions, we presume he will thank us for omitting such parts of his letter as proceed upon a misapprehension of what has been or is intended to be done.

He says he has seen in a late number of our periodical a notice that candidates for admission to the Courts of Law are now required to answer *three* out of the five divisions submitted to them at their examination; and he asks whether it is expected that they should answer the *whole* of the questions in those three departments *correctly* before they will pass? We have already answered this question;* and, considering the way in which the Examination has been hitherto conducted, we think there was no ground for supposing that the *whole* of the questions must be answered *correctly*.

Our correspondent having asked the question, however, assumes the affirmative to be the true answer, and proceeds to condemn the intended practice. Omitting the censures on a grievance which does not yet exist, we submit to our readers the rest of

* See page 298.

"An old Practitioner's" remarks,—the object of which appears to be the continuance of a very lenient mode of examination for some time to come:—

"We know that the subtle distinctions of the Common Law often puzzle the judges, whose peculiar province it is to adjudicate upon it, and the practice of their Courts often obliges them to refer to books, or to Clerks in Court, for the requisite information: what would be said if these learned judges were always expected to decide abstruse questions of real property law? The principle may doubtless be engraven on their minds; but how often are they not obliged to inquire as to the *practice* of conveyancers on certain points? And now the mere tyro in the profession is expected to answer satisfactorily questions on the principles of Common Law—the principles of Real Property Law—the principles of Equity—the practice of the different Courts at *Nisi Prius*—the law of evidence—the practical details of conveyancing, and the practice of the Courts of Equity. This is surely sufficient to make him "sweat beneath the fardel of a weary life," and look with anxious expectation upon the end of his studies. But what shall we say when we include the mysteries of Bankruptcy, Insolvency, and Lunacy, and the statutable expanse of Criminal Law?

"I consider there is great room for indulgence towards the examined for several years to come. Law subjects, we know, require long and mature consideration. We will then suppose a case, and which is more likely to happen to a deep-thinking and meditative student, that such student has dwelt upon and laboured assiduously fully to master and understand a particular subject in his profession, while another student has read more extensively, but superficially. The former, whose legal abilities of investigation may be infinitely superior to the latter, would, because an untoward yet trivial question, (which might perhaps be found by mere reference to a practice book), were put to him, be plucked, whilst the other—pert, practical, and superficial—would manage to pass. The Examiners, I think, taking these things into consideration, should make the questions more theoretical, and thus see whether the student possesses a basis for his learning, and not ask those practice questions, which are more likely to be delineated on the *rasa tabula* of the mind of some public office clerk, than to be found in any books which a young man may peruse. This should be particularly borne in mind with regard to those who have served their articles in the country, and intend practising there. A good and creditable examination in real property law, and some other general points, which may come under their department of practice, ought to enable them to pass.^b They have no opportunity of acquir-

ing any knowledge of the practice of the Courts except from books, the reading of which they care little about, because the subject never comes under their consideration in the way of business. It is very unfair not to look to the relative position of the education of the different candidates.

"The above remarks are partly induced by some observations of one of the Examiners to me; and, from what I hear, the object of this letter will be soon taken into consideration."

When the intended Examination was first announced, we admitted a very free discussion of its utility; but as it has now been in operation for two years, and its benefits are generally admitted, and the mode of Examination approved, we deem it needless to re-open the whole question; and, indeed, in admitting some of the above remarks, we have gone rather farther than necessary, in order to shew our willingness to accommodate all parties. The following letter, in a different tone, may be added:—

Sir,

As a candidate for the Examination in Easter Term next, and having attended the lectures at the Incorporated Law Society, I beg to return my sincere thanks to the members of that institution for their very great kindness in obtaining the delivery of those lectures, the utility of which must be acknowledged by all who are studying for their examination; and I beg to suggest a few observations for the perusal of my fellow candidates, through the medium of your truly valuable journal, on the importance of the profession in which we are about to enter. When we consider the dignity and importance of the study in which we are engaged in all its relations to the general good, we shall be deeply impressed with the profound sentiments expressed by Bishop Hooker, particularly in the following eloquent passage:

"Of Law, there can be no greater acknowledgment than that her seat is the bosom of God; her voice, the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempted from her power: both angels and men, and creatures of [what condition soever, though each in different sort and manner, yet all with uniform consent admiring her as the mother of their peace and joy."

Every sincere lover of his country, therefore, will be eager to promote, by all expedients in his power, that rational, enlightened, and comprehensive system of legal education, which improves and perfects all of them; and he will determine that every channel to useful information ought to be opened, every suitable reward proposed, and every honourable incitement held out, which may stimulate us to improve to the utmost of our power the faculties with which providence has blessed us, in order that the seeds of instruction may produce the most copious harvest of virtue, and our conscientious and able discharge of all the duties

^b How are the Examiners to *testify*, in the terms of the rule, that the candidate is *fit and capable to act as an attorney and solicitor*, if he cannot answer any questions of Law or Equity? Ed.

of life may contribute equally to the happiness of ourselves and our friends, and to the general prosperity and true glory of our country.

Having made these few observations, I sincerely trust that every candidate for the ensuing examination will study hard that he may pass his examination with credit; and I doubt not that where the worthy Board of Examiners see and know that a candidate has been labouring in the vineyard, they will take care that his labor shall not be in vain.

JUSTUS.

ON LEGAL EXAMINATION DISTINCTIONS.

WE have received some more letters on this subject. Although many of our readers are particularly interested in the conclusion which may be come to, they should recollect that others care but little about it; and we must therefore hold the balance as even as we can. Some of the more ardent class, who take for granted that distinctions will certainly be bestowed, have favoured us with suggestions on the kind of prizes that it will be proper for the occasion. This is somewhat premature. Three points must first be settled.

1. The persons interested in the question; namely, the attorneys and their articled clerks, must pretty generally agree that some distinctions are desirable;—because we incline to think that if it be not quite clear that such distinctions are generally called for by the profession, the examiners will scarcely volunteer the responsibility of conferring them.

2. If the profession should be nearly unanimous in asking the examiners to undertake the additional labour of awarding proper distinctions or prizes, it will then no doubt be seriously considered at a full meeting of the board of the examiners whether they will enter on the anxious duty of ascertaining the relative merits of the candidates, and assigning the appropriate degree of reward or commendation.

3. We think that the awarding of prizes or distinctions, in addition to testifying the fitness and capacity of the candidates to act as attorneys, will be such an extension or alteration of the existing regulations, that the Judges must be consulted on the subject, and their approbation obtained.

When the general principle has been settled, it will then be proper to consider in what form the distinctions shall be conferred. At present we think it needless to discuss the comparative advantages of gold medals, presents of books, certificates of

excellence, lists of the order of merit, &c. &c. In the mean time we subjoin the reply of one of our correspondents on the general question.

“The arguments of G. H. at first sight appear somewhat specious, and to the point—a little examination, however, will at once convince every unprejudiced mind of their utter fallaciousness and inapplicability. I allow it to be true that the duties of a solicitor are very numerous and very perplexing—and that his distinction must be attained by other than mere legal knowledge; but I deny that from this or any other fact it can be inferred that the distinctions proposed to be given will have the effect of holding forth those who may obtain them as possessing that other requisite knowledge—or of being competent to act sufficiently as a solicitor in *every respect*—but only shew that they are competent so far as the *knowledge of law* is material. Every one knows that the tribunal which awards these distinctions have to decide as to the *legal* knowledge of the candidates, and nothing more. How then can it possibly be supposed (as G. H. wishes us to believe), that these distinctions would be considered as evidencing the general qualifications of the possessor—his “trustworthiness,” or his “knowledge of human nature.”

After some more observations to the effect that the distinctions would act as a lure to obtain clients, and that it would directly be supposed that those who had obtained them were the best qualified to act as solicitors, G. H. says “the consequence would be they would be found, despite of the legal knowledge which gained them the honour, either not trustworthy or not skilful.” How this consequence is deduced—by what process he arrives at it, I am at a loss to understand. It cannot be denied that the conclusions virtually amount to this—that honesty and a thorough knowledge of the law are inconsistent,—and that the man who has great legal attainments can have none other. The first of these is not worth notice. As to the second, I will venture to assert that the opposite is much nearer the truth, and that, with few exceptions, he who has a sound knowledge of the law, will generally combine with it the other necessary qualities of a solicitor.

The last argument in the letter which I am now considering is, that the advantages which are likely to arise from adoption of the system under discussion cannot be shewn by analogy to the universities—for that there the honours or distinctions are taken “among a class of men who would not unduly appreciate them”—thereby insinuating, what he afterwards more plainly states—that the great body of solicitors *would unduly* appreciate them. This, I think, can certainly be contradicted; and if it cannot, it is an argument in favour of the plan I am advocating; for it shews how much that body needs improvement.

There is yet another ground urged by J. R. which I must shortly advert to—viz.: that it is

impossible to select perhaps out of a hundred candidates three or four who have, on the whole, answered their questions the best. If he will only take the trouble to ask some person experienced in these matters, he will find it is not so difficult as he imagines.

I submit that I have now shewn that the arguments of your correspondents can have no weight in deciding the question at issue; and I still maintain that the adoption of the plan now under discussion will be attended with great advantages, for it will no doubt arouse a strong spirit of emulation; and the students seeing that there is a way, the motto of nearly one and all will be—

— Tentanda via est, quæ me quoque possim
Tollere humo, victorque virum volitare per ora.

C.

The following letter is worthy of attention, on account of its suggesting a mode for obviating some of the objections to the proposed honours or distinctions:—

Sir,—I have read several letters in your valuable journal, on the subject of granting “legal honours” to those who may pass their examinations with merit; and my opinion is, that honours ought to be granted in *every separate branch of the law*, as the students invariably apply themselves more particularly to one branch than another. According to the present plan of examination, the student ought to be well read and conversant with a *majority* of the branches, before he could attain legal distinctions; and this is the opinion entertained by some of your correspondents: but from this plan I must beg to differ.

I should like to see prizes awarded separately to each branch of the law, so that one who passed with more than a common knowledge of conveyancing, bankruptcy, or any other branch, might with propriety be rewarded for his attainments therein; and it should be incumbent on the student who wished to pass with legal honours in any one or more of the branches of his profession, to give *notice of his intention* to do so, that the Examiners might know what number of questions ought to be answered correctly to entitle him to legal honours.

According to my plan, he would receive honours in every branch in which he had particularly distinguished himself at his examination; and this, I think, would be a sufficient stimulus for every gentleman entering the profession.

I cannot help thinking that this will meet the views of every one interested in this important question, as it is almost impossible to suppose that a student cannot fix his mind to one particular study of his profession, so as to qualify himself for legal honours in it, without at the same time acquiring a considerable knowledge of the other branches.

A SUBSCRIBER AND ARTICLED CLERK.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—JUDGMENT CREDITOR.—ELEGIT.

A creditor, by judgment on bond, sued out a writ of execution against the debtor's personal estate; and that writ becoming ineffectual, the creditor filed a bill in Chancery to attach proceeds of the debtor's real estate in the hands of his trustee: Held, that it was necessary to sue out an elegit on the judgment at law, in order to constitute a title to the aid of this Court, and a demurrer on that ground was sustained.

The plaintiff obtained a judgment at law, on a bond against the Duke of Marlborough, and issued a writ of *fi. facias* thereon against the Duke's personal property at his residence at Blenheim; but he was deprived of the benefit of that writ, by reason of another person being in possession of the property by virtue of a bill of sale to him for valuable consideration. The plaintiff, without taking any further proceedings against the Duke's freehold property, filed his bill in Chancery, stating among other things that the late Duke of Marlborough, who died in 1817, by his will bequeathed to the duchess, his widow, an annuity of 30,000*l.* charged on his Blenheim estate, which, so charged, he devised with other freehold estates to the defendant, the present duke, who in the year 1818, by certain trust deeds, conveyed all his freehold estates to the defendant, General St. John, and others, in trust for the benefit of his creditors: that by one of such deeds it was covenanted that all the rents and profits of the Blenheim estate, *ultra* the sum of 16,000*l.*, which the duchess agreed to accept in lieu of 30,000*l.*, should go to the payment of the creditors; but if the duchess would forbear in any year to receive less than 16,000*l.*, the difference between that sum, and the sum she would receive, should be paid to the duke. The bill charged that a sum of 3000*l.*, which the duchess had forborne to receive, together with other monies, remained in the hands of General St. John, for the duke; and it prayed that it might be declared that the plaintiff had a lien on such monies, in respect of his judgment, &c. The Duke, and General St. John, severally demurred to the bill for want of equity; and the Vice Chancellor allowed the demurrers. The plaintiff appealed.

Mr. Temple and Mr. Ellison, in support of the appeal, after stating the facts as above, said, the main objection raised before the Vice Chancellor, to the bill, was, that the plaintiff had not sued out a writ of *elegit* against the Duke's freeholds before he called for the aid of this Court; and his Honor rested his judgment on the case of *Dillon v. Plashett*,* and a *dictum* in Lord Redesdale's book on Pleading, to the effect that a judgment creditor, in order

* 2 Bligh. 229; S. C. 1 Dow. & Clark. 320.

to entitle himself to relief in equity, must shew by his bill that he proceeded at law to the extent necessary to give him a complete title, as by suing out an *elegit* or a *fi. fa.*, the execution of which is avoided, otherwise the defendant might demur. But the cases referred to by Lord Redesdale did not support the proposition laid down by him; for *Angel v. Draper*,^b one of the cases, is silent as to *elegit*, and applies only to the writ of *fi. fa.*; and in *Manningham v. Bolingbroke*, also referred to by Lord Redesdale, a demurrer for want of an *elegit* was overruled, as appeared from the report in 2 Dickens, 583. The other cases cited before the Vice Chancellor, *Shirley v. Watts*,^c and *Burden v. Kennedy*,^d were inapplicable. But there was a case of *Townsend v. Askew*, before Lord Eldon, who made an order for a receiver, and ultimately decreed in favor of the plaintiff for payment of his judgment debt, though he had not sued out an *elegit*, as appeared from an endorsement on counsel's brief in that case, which is not reported.

Mr. Jacob, and M. Wray, for the defendant, after submitting that any money accruing to the Duke from the forbearance of the Duchess, was a mere contingency, depending on her will, insisted that the suing out of an *elegit* against the freehold property was necessary, to give a judgment creditor a title to come for the aid of this Court. *Dillon v. Plaskett*; *Davidson v. Fuley*.^e The objection was not taken in the case of *Townsend v. Askew*, but the plaintiffs there afterwards sued out the writ of *elegit* before they came for final judgment. Why should a party be required to proceed at law at all to complete his title to come to equity, if he was not to proceed to the utmost length; and the obtaining the writ of *elegit* was proof of that. The writ was of great importance, for it is from its date that the judgment bound the defendant's lands and the accruing rents.

Among the cases cited on both sides, were *Curling v. Townsend*,^f *Lewis v. Lord Zouche*,^g *Cocker v. Lord Egmont*.^h

The Lord Chancellor.—From what is laid down in Lord Redesdale's work, and in *Dillon v. Plaskett*, I was always of opinion that it was necessary to sue out the writ of *elegit*. The plaintiff comes here to claim the benefit of the writ, and all the cases referred to shew that in respect to personal estate, a writ of *scire facias* must be carried out to the whole extent of the process; and no case can be discovered which states that in the case of an *elegit* there is a distinction, except the solitary case of *Manningham v. Bolingbroke*, in Dickens, whilst we have the authority of Lord Lyndhurst in

Dillon v. Plaskett, and the uniform practice of the profession in favour of the position laid down by Lord Redesdale. What, in a case of this nature, is the jurisdiction which this Court assumes? Not a jurisdiction arising from a *lien* claimed by the judgment creditor in respect of his judgment, but because this Court, finding the necessity of lending its assistance to the judgment creditor, gives him the power of redemption. If an estate be sold by the Court, it takes care that the judgment creditor is paid off; and in carrying a sale into effect, the Court clears it of its incumbrances. It was determined in *Tunstall v. Trappes*,ⁱ that where a judgment is entered up against the owner of lands of which the legal estate is outstanding in the trustee or mortgagee, a purchaser who has notice of a judgment will be bound by it, although the creditor may not have taken out execution on his judgment; the question in that case being, not what was the right of the judgment creditor against the debtor; but a sale of the estate being necessary, it became the duty of the Court to clear it from incumbrances; and it is not correct to say that a judgment creditor has a right to require satisfaction of his judgment, simply as such creditor, without issuing the process of a writ of *elegit* on his judgment. Originally, a mere judgment creditor had no right against a freehold estate, the writ of *elegit* alone conferring that right on him. The judgment creditor having exercised the option the law allows him, as to the mode of proceeding on his judgment, the sheriff gives him the legal title, if there be no impediment in his way; and if any impediment exists, then he has recourse to the aid of this court, which enforces for him his rights. How then can the judgment creditor have a better right than if an impediment to his enforcing his judgment actually existed? Can this Court act on the option the law gives him where a writ of *elegit* has not been sued out, when it is well understood that it lends its aid only to enforce a legal right. The judgment creditor must be in possession of the writ, to enable him to recover in an action of ejectment. However clear the case may be to my mind, both on principle and authority, I will nevertheless, before I decide finally, examine the case of *Manningham v. Bolingbroke*.

His Lordship, on a subsequent day, said the case of *Manningham v. Bolingbroke* had been examined in the registrar's book, and no such order was made as that mentioned in Dicken's report.

The demurrer was allowed, and the appeal dismissed.

Neate v. Duke of Marlborough and others, at Westminster, January 16th, 17th, and 20th, 1838.

^b 1 Vern. 398.

^c 3 Atk. 200.

^d 3 Atk. 739.

^e 3 Bro. C. C. 203.

^f 19 Ves. 632.

^g 2 Sim. 388.

^h 6 Sim. 311.

ⁱ 3 Sim. 286.

Queen's Bench.

[Before the Four Judges.]

PARISH SETTLEMENT.

The 57th section of the 4 & 5 W. 4, c. 76, does not create any new settlement. Therefore, where a man married the mother of an illegitimate child, an order of justices to remove the child from a parish where it had been placed out to nurse, and to remove and to convey it to the parish of its birth-settlement was held good, and on order of sessions, reversing the order of removal, was quashed.

The sessions had quashed an order made by two justices for the removal of an infant pauper named Sophia Hellings, from Wendron to Constantine, subject to the opinion of the Court upon a case which stated the following facts:—Sophia Boswarwick, while a single woman, was, in the year 1832, delivered of the pauper in the parish of Constantine. In the year 1834 the Poor Law Amendment Act was passed. About that time the child was by the parish of Constantine put out to nurse in the parish of Wendron, and in 1835, the mother married her present husband John Boswarwick, of the parish of Kenwyn. The putative father of the bastard child was a farmer, living in the parish of Constantine, and he had been compelled, at the instance of the officers of that parish, to pay a certain weekly sum towards the support of the child. When the mother married, the putative father refused to continue these payments, alleging that he was relieved from further responsibility by the marriage of the mother, which had, under the Poor Law Amendment Act, cast upon the husband the burthen of maintaining her children. The parish of Constantine then assuming that it was relieved in like manner from all liability to support the child, refused any longer to continue its payments to the parish of Wendron for the maintenance and nursing of the child. The parish of Wendron brought the question before two justices, who made an order for the removal of the child from the parish of Wendron to the parish of Constantine. The latter parish appealed to the sessions against this order, and the sessions quashed the order, subject to the opinion of this court, and directed the child to be taken back to the parish of Wendron.

Sir W. Follett, in support of the order of sessions.—The marriage has, under the 57th section of the 4 & 5 W. 4, c. 76, put an end to the birth-settlement, at least till the child arrived at the age of 16, or the mother died, and had in the mean time given it a settlement in the parish of the mother's husband. That section provides "that every man who after the passing of this act, shall marry a woman having children at the time of such marriage, whether such children be legitimate or illegitimate, shall be liable to maintain them as part of his family, and shall be chargeable with all relief or the cost price thereof granted on account of such children, until they shall

attain the age of sixteen, or until the death of the mother; and such children shall for the purposes of this act, be deemed a part of such husband's family accordingly." It is impossible to effect the object of this clause, except by declaring that the child obtains the settlement of the mother's husband. It is clear, that at all events, the putative father is relieved from the necessity of its support, and that whatever may be the poverty of the husband or the wealth of the putative father, the latter is no longer liable. *Lung v. Spicer*.^a The same cause which relieves the putative father must relieve the parish in which the child had a birth-settlement. The child cannot become a part of the husband's family, and he cannot be liable for the relief granted on account of the child, unless in the parish where he himself is settled. At all events, the parish of the birth-settlement is not that to which the child ought to have been removed. The other side will rely on the case of *The Queen v. Walthamstow*,^b but that case does not go so far as the present, or if it does, then it is submitted that the point there decided should be re-considered. It is true, that in that case, the children of a former husband were held not removable to the place of the second husband's settlement, but the Court there did not distinctly decide the question of the liability of the husband's parish, but held that the order of removal was bad, because it declared the settlement of the children to be in that parish. The opinion of the Court turned therefore, entirely on the form of the order, and the case is only an authority to that extent. The parish in which this child was living at the time of the marriage, must enforce the liability of the father, and the parish of the birth has now nothing to do with the burthen of its maintenance.

Mr. W. C. Rowe, *contra*.—The words of the 57th section do not contain any provision conferring a settlement. They merely create a personal responsibility in the father. Where the legislature intended to create a settlement, it has known how to employ proper terms for that purpose. Thus in the 71st section, when providing for the maintenance of illegitimate children, it is enacted that "every child which shall be born a bastard after the passing of this act, shall have and follow the settlement of the mother of such child, until such child shall attain the age of sixteen, or shall acquire a settlement in its own right; and such mother, so long as she shall remain unmarried or a widow, shall be bound to maintain such child as a part of her family, until such child shall attain the age of sixteen, and all relief granted to such child while under the age of sixteen, shall be considered as granted to such mother." In this section there are all the provisions which are to be found in the 57th section, but

^a 1 Gale 426; 1 Tyr. & Gr. 358; 1 Mee. & W. 129.

^b 1 Willm. Woll. & Dav. 23; 1 Nev. & Per. 460.

there is the additional provision that the child shall have the settlement of the mother. The omission of that declaration in the 57th section shews that there the legislature did not intend to create a settlement, for where that intention was entertained it has been expressed in words that could not admit of any doubt. This point was fully decided in *The Queen v. Walthamstow*, and that case must govern the present.

Lord Denman, C. J.—The birth-settlement in this case was obtained before the passing of the Poor Law Amendment Act, and the question is, whether this settlement, so obtained, is now gone, and whether the child has become entitled to another settlement in consequence of the marriage of its mother. This question depends on the construction which must be given to the 57th section of that act, aided by reference to the 71st section. By the first of these sections the husband is made liable to all relief given to the child which is to become for a certain number of years a part of his family. If there had been no other provisions in the act, and if its general object had been to create settlements, these words might have been deemed sufficient for that purpose. But when we consider that the object of the act was rather to direct a new mode of administering relief than to create new settlements, and that there is one other provision at least, in which a settlement is created, and created by words that can leave no doubt on the mind of any one, I cannot think that we should be justified in implying the creation of a settlement under such words as are used in the 57th section. In the case of *The Queen v. Walthamstow*, we held that these words did not justify an order of removal to the father's parish, and unless we are prepared to overrule that decision, it seems to me that we must quash the order of sessions in this case. The parish of Wendron has certainly nothing to do with the settlement of this child, which was not taken there for the purpose of being relieved as a pauper, but merely for the purpose of being nursed. The husband's liability is clear upon the 57th section, and the respondent parish is not to have thrown upon it the burden of enforcing the liability. The order of the justices was properly made, and the order of sessions, reversing it, must therefore be quashed.

Mr. Justice Littledale.—I am of the same opinion. The husband might be compelled to support the child under the provisions of the 57th sec. and the parish of Constantine, to which the child must go if the husband dies, is the parish that ought to take upon itself the task of compelling him to do what the act requires. The parish of Wendron has nothing to do with the matter.

Mr. Justice Williams.—A comparison of the two sections will shew that the Court was right in deciding the case of *The Queen v. Walthamstow*, which does clearly decide, that under circumstances like the present, the settlement of the child is not fixed during the marriage, in the parish of the husband. All that is said in the 57th section is, that the child

is to be part of the husband's family, but in the 71st section, where there is a similar provision as to the mother of an illegitimate child, there is this enactment added, that "the child shall have and follow the settlement of the mother." That addition aids us in construing the meaning of the former section, and it seems to me that the right construction of it is, that the child does not thereby gain a settlement in the husband's parish. The parish of Wendron has nothing to do with this question of settlement, and the order of sessions is therefore bad.

Mr. Justice Coleridge.—The mother, in this case, having married after the birth of the child, *Lang v. Spicer* settles that by that marriage the putative father is released from further liability. Who then is to bear the burthen of the child's maintenance? The husband of its mother. But he may become insolvent, or he may be unwilling to pay. What parish must take the risk of these things? That parish in which, but for his marriage with the mother, the child would have been settled. There is nothing in the act of parliament which makes the child irremovable from Wendron—is there anything which authorises its removal to Kenwyn? If there is, there must be a new form of removal, as it is now contended that there is a new settlement. Can the child be removed to Constantine? It can, unless we are prepared to say that the words in the 57th section, "become a part of his family," destroy the birth settlement. Are the words of that section strong enough for that purpose? I think that they are not, and that we must not give to them the extended meaning of the words in the 71st section. I think that the child was rightly removed to Constantine by the order of the justices, and that that parish must, if it is so advised, seek its remedy against the husband of the child's mother.

Order of sessions quashed.—*The Queen v. The Inhabitants of Wendron*, H. T. 1838. Q. B. F. J.

Queen's Bench Practice Court.

IRREGULAR ARREST.

An irregularity in the arrest of a defendant cannot be taken advantage of, after judgment has been obtained, and he has been charged in execution.

Archbold moved for a rule to shew cause why the defendant should not be discharged out of custody, as to this action. She had been arrested in October 1833, and having been taken to the office of the plaintiff's attorney, she gave up certain title deeds into the hands of the attorney, as a security for the debt. She was at that time set at liberty, but subsequently, in the December following, was re-taken on the same *capias*, the plaintiff's officer telling her that the deeds were now useless, and she must return into custody. She, in consequence, went to prison, and two years ago, she was taken to the King's Bench

Prison, and subsequently the plaintiff declared, obtained judgment by default, and charged her in execution. The ground of the present application was, that the second arrest was in fact a mere nullity.

Patteson, J., said that the defendant appeared to have returned into custody voluntarily, and the application was too late, after all the steps which were described as having been taken in the cause. The rule, therefore, with regard to the arrest, could not be granted, but as there appeared to have been some bad faith respecting the deeds, a rule might be taken, calling on the attorney to give them up.

Rule accordingly.—*Cross v. Marsh*, H. T. 1838. Q. B. P. C.

LORD'S ACT.—NOTICE.

Where it is sought to bring up the defendant under the compulsory clause of the Lord's Act, the notice, required must have expired before the first day of the Term in which he is to be brought up.

Thomas moved for a rule to bring up the defendant under the compulsory clause of the Lord's Act, (32 G. 2, c. 28, s. 16.) The notice which was necessary to give to the prisoner, had been given only nineteen days before the commencement of the term, and a question arose as to whether the twenty days required were to be reckoned exclusive of the term, or whether they might not be calculated so as to terminate at any time before the prisoner was brought up. The statute provided that "such creditor is hereby authorised to require such prisoner, (on giving twenty days' notice in writing to him, that such creditor designs to compel such prisoner to give into Court, within the first seven days of the term which shall next ensue after the expiration of the said twenty days, upon oath, a real account in writing of all his real and personal estate), to discover and deliver up his estate, &c.

Patteson, J., said that the application must be refused on the authority of the case of *Brinstow v. Squires*, 4 D. P. C. 365.

Rule refused.—*Ralph v. Jacobs*, H. T. 1838. Q. B. P. C.

SETTING ASIDE WARRANT OF ATTORNEY.

On an application to set aside a warrant of attorney, it need not be sworn that the defendant is "in custody on mesne process," if, from the facts, it appears that such was the case.

When a defendant is in custody of one plaintiff, and gives a warrant of attorney to another, he cannot avail himself of the rule of H. T. 2 W. 4, in respect of such warrant of attorney.

Andrews, Serjt., had obtained a rule calling on the plaintiff to shew cause why the warrant of attorney given by the defendant, and judgment and execution thereon, should not be set aside; and why a sum of 78*l.* in the hands

of the sheriff, should not be paid over to the defendant, on the ground that the warrant was not in conformity with the rule of Court, of H. T. 2 W. 4, s. 72, against which

John Bayley shewed cause.—The rule referred to, provided that no warrant of attorney to confess judgment, or *cognovit actionem*, given by any prisoner in custody of a sheriff or other officer, on mesne process, should be of any force, unless there should be present some attorney on behalf of such person in custody, expressly named by him, and attending at his request, to inform him of the nature of such warrant of attorney, or *cognovit*, before the same was executed; which attorney should subscribe his name as a witness to the due execution thereof, declaring himself to be the attorney of the defendant, and stating that he subscribed as such attorney. This rule, it was now pointed out, applied to cases of prisoners in custody on mesne process only. *France v. Clarkson*, 5 D. P. C. 699. And in *Lewis v. Gomperts*, 6 D. P. C. 7. *Coleridge, J.* held that the fact of the custody of the prisoner being on mesne process, must be shewn on the affidavit. Here that fact was not sworn to, but it was only alleged that the defendant was arrested, and taken to a lock-up-house. This was equally applicable to her being arrested on final process, for she might be taken to a lock-up house on a *ca. au.*

Andrews, Serjt., said that the allegation in the affidavit was that after the obtaining the warrant of attorney, judgment was signed. The custody of the defendant at the time of giving the warrant of attorney, therefore, must be presumed to be on mesne, and not final process.

Patteson, J., thought the affidavit sufficient. *J. Bayley* then produced an affidavit, in which it was sworn that the arrest of the defendant was not at the suit of the present plaintiff, and that while she was at the lock-up house, she sent for the plaintiff Weatherall, and gave him the warrant of attorney in question, in order to secure his debt. The rule, it was submitted, applied only to cases, where warrants of attorney and *cognovits* were given to the plaintiffs at whose suit the defendants were arrested, or at whose instance they were in custody, and therefore the present case was not within its provisions. The object of the rule was to preserve defendants from being influenced by the creditors at whose instance they were in custody, without the advice of an attorney; but here the plaintiff was not in that position, and the mischief alleged was not of that description which it was proposed to remedy. *Smith v. Burton*, 1 East. 241, was cited.

Andrews, Serjt. contrò, contended that the words of the rule, as they were general, would apply to this as well as all other cases in which defendants were in custody on mesne process at the time of executing warrants of attorney or *cognovits*.

Cur. adv. vult.

Patteson, J., subsequently said that in considering this rule it must be remembered that

it was not entirely new, but that it was made only for the purpose of assimilating the practice of the Courts. In one Court it was an old rule, and had called forth the decision of the Court in *Smith v. Burlington*, which had been cited, and which was directly in point. The rule was there fully considered, and the Court declared that they could only come to one conclusion; and if that was the case, he did not see how he could give a different decision.

Rule discharged with costs.—*Weatherall v. Long*, H. T. 1838. K. B. P. C.

MONEY IN COURT IN LIEU OF BAIL.

Where on an application for leave to take money out of Court, which has been deposited in lieu of bail, and for costs, it appears that issue may be joined before the rule can be disposed of, the Court will grant a rule with a stay of proceedings.

Fitzjames moved for leave to take a sum of money out of Court, which had been deposited in lieu of bail, together with 20*l.* for costs; and he applied under the common law jurisdiction of the court, and not under the stat 7 & 8 G. 4, c. 71, because it had been held that under that statute the application must be made before issue joined. In the present case, the proceedings were in that position that issue might be joined before the rule which was applied for could be disposed of, and in that case, it might be objected that the application was too late.

Patteson, J., in order to prevent that step being taken, granted a rule with a stay of proceedings.

Rule accordingly. *Bloor v. Cox*, H. T. 1838. Q. B. P. C.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.
[This bill stands for second reading.]

For Exchanging Lands in Common Fields.
Lord Ellenborough.
[This bill is in Committee.]

For the safe custody of Insane Persons.
[This bill has passed]

For the better Regulation of Watermen and Steam Boats on the Thames.
[For second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the better Administration of Justice at Quarter Sessions.

Lord John Russell.

To provide for the access of Parents, living apart from each other, to Children of tender age.

Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[This bill stands for second reading on 11th April.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.

Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts.

Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

To provide for international Copyright.

Mr. P. Thomson.

LAWS OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases.

The Attorney General.

[These bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To amend the 6 & 7 W. 4, for facilitating the Inclosure of Open and Arable Fields in England and Wales.

Lord Worsley.

[This bill stands for second reading on the 7th March.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel.

Mr. O'Connell.

LAW OF PARLIAMENTARY ELECTIONS.

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament.

Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To regulate the times of Payment of Rates and Taxes by Parliamentary Electors, and to abolish the Stamp Duty on the Admission of Freemen.

Lord John Russell.

[This bill is in Committee, and stands for 27th April.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill stands for second reading.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

Mr. Warburton.

[In Committee.]

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

Mr. Hume.

[For second reading.]

THE EDITOR'S LETTER BOX.

The First Part of the Analytical Digest for 1838, of all the Cases reported in the House of Lords, in the Courts of Law and Equity, in the Privy Council, and in the Ecclesiastical and Admiralty Courts, was published on the 17th Feb., and will be continued Quarterly.

A correspondent impugns the *conjecture* at p. 253, "that the word attorney seems to have primarily signified one who appeared at the tourney and did battle in the place of another, and that tourneys or tournaments, or something similar, took place at certain biennial meetings of the sheriff in the times of our Saxon ancestors." On the contrary, he states that "the turn of the sheriff (made biennial by Magna Charta) was held before the introduction of the tourney or tournament, which was never practised in that Court, or by the attorneys who attended it. Those who did battle as substitutes in trials at law were called champions, not attorneys. *Vide* Blackstone and the Encyclopædists."

We think there can be no objection to an articulated clerk, who has given due notice of examination for next Easter Term, also giving notice for the Trinity Term following, in order that, if he should be prevented from going up in Easter Term, he may be examined in Trinity, according to the second notice. This is the proper ground of the precaution. The other need not be stated.

It may be useful to state that Mr. Justice Coleridge, at the commencement of last Term, made an order in the case of a candidate who had been examined and approved, *enlarging the time for his being admitted* an attorney to Michaelmas Term next, subject to his giving the usual proper notices of admission. This course of proceeding will remove all difficulty as to the party being obliged either to take out and continue his certificate after admission, or to incur the trouble and expense of re-admission,—though we think no re-admission ought to be required. It will, at all events, prevent the three years from beginning to run, after the expiration of which the higher certificate duty becomes payable.

"A Subscriber" is informed, that the meetings of the Law Students' Society are held in a room appropriated to them, weekly, at the Law Institution.

The letter of "A Solicitor of Thirty Years Standing," will probably appear next week.

A. B.'s letter is under consideration.

The Legal Observer.

SATURDAY, MARCH 10, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LORD JOHN RUSSELL'S BILLS FOR THE BETTER ADMINISTRATION OF JUSTICE.

ON the first of the present month Lord John Russell introduced into the House of Commons a measure for the better Administration of Justice at Quarter Sessions, and we are sure that we need not call the attention of our readers to so important a subject. As the bill will probably not be printed for some time, we have thought it right to give a summary of his Lordship's statement; and we shall merely, on the present occasion, shortly state what occurs to us on it, reserving our judgment until we have the full means for forming it.

The two first objects of the proposed bill are a more proper arrangement and distribution of criminal business between assizes and sessions, and the appointment by the Crown, if the magistrates shall require it, of a competent barrister to act as Chairman of the Sessions, and to preside over the Sheriff's Court. With respect to these objects we conceive that there will be no objection from any quarter. We have repeatedly recommended that both these measures should be adopted, on behalf, as well of the profession, as the public.

The third object is to establish a County Court, having jurisdiction over demands of forty shillings to ten pounds; for although this part of the measure is treated as an enlargement of the Quarter Sessions, it is in fact the establishment of a new Court. This Court is to sit every six weeks, with five jurors, and a summary process is to be given to it. But we have as yet but imperfect information respecting it. Are the proceedings to be under the controul of the Superior Courts? What are to be the

fees allowed to the practitioners, and who are to be the advocates to be employed? These are matters peculiarly interesting to the profession.

We wish to have the question of the establishment of this Court fairly argued and considered in these pages. On the one hand, we must remember that there is a very strong and general feeling in favour of some new Court for the recovery of small debts, and that by favour of this feeling, acts for the establishment of such Courts at particular places pass every session; and we may here particularly refer to the Finsbury Court of Requests Bill, of which we gave an analysis in a recent number. On the other hand, if the new scheme is open to the great objections against Local Courts, they have always appeared to us of very great weight. If the present system for the administration of justice is broken up; if the great bulk of the business is drawn from the Circuits and the Superior Metropolitan Courts, how will a sufficient bar be maintained; and if a sufficient bar fail, where will the Judges of the Land be chosen from? Our readers are familiar with these arguments. They have been urged in these pages, we fear, *usque ad nauseam*.

We are desirous now of having the bill fairly and deliberately considered,—a mere professional opposition may do more harm than good. If both of the great parties in the state join in supporting a bill of this nature, the opposition of a class of persons whose interests may be affected by it will be of little avail. Still, if when fully examined, it can be proved to be detrimental to the public interest, it may be successfully opposed. With these few observations we invite the attention of our readers to the consideration of the measure.

Lord John Russell said he rose to bring under the consideration of the House an important measure, relating to the administration of justice in the Courts of Quarter Session, and in the other County Courts in this country. There were several reasons why it was necessary that the attention of Parliament should be called to this subject, and that there should be some legislation with reference to it. One very obvious reason was that very great changes had taken place in the law. With regard to capital punishment: For some years past those changes had been gradually occurring; but he more particularly referred to those more important alterations which were made in 1832, and during the last year. They had abolished capital punishment for offences that used to be deemed capital, and which used to come under the cognizance only of the Judges. In order to shew to the House the change of feeling which had taken place on this subject, he would contrast a speech made by a person of great eminence not many years ago, with the actual facts of the last year, with regard to capital punishment. The opinions of the eminent person to whom he alluded were those of Chief Justice Ellenborough—a man of undoubtedly high legal attainments, and of most unsuspected integrity in the administration of justice in the Court over which he presided for many years. It was known that Sir Samuel Romilly had proposed several measures for the mitigation of the severity of the criminal law. One of those measures related to the punishment for stealing 5s. in a shop. That offence was at that time capital, and Lord Ellenborough when that bill came into the House of Lords, spoke with reference to it in these terms:—

The Noble Lord then read a passage from Lord Ellenborough's speech, wherein he said the Judges were unanimously agreed as to the inexpediency of abolishing the capital punishment in the proposed cases. He considered that if the bill were passed they would not know where they stood—whether upon their heels or their heads. If they repealed the act attaching the penalty of death to stealing in a shop to the value of 5s., next year the abolition of the capital punishment would probably be expected in other cases. In the country the effect would be most disastrous; every poor cottager who left his dwelling unprotected might expect to be robbed.

Those were the terms in which a person of the undoubted talent and authority of Lord Ellenborough—those were the terms which he used but a few years ago in favour of allowing the law to take its course, for stealing to the amount of 5s. in a shop. He sought not by this reference in any way to diminish the weight which attached to the name of that noble and learned Lord; indeed, the opinions he quoted were stated to be those not of that noble and learned Lord alone, but of all the judges at that time; and his object was to shew the great alteration which, in the course of a few years, had taken place as regarded the feeling entertained on this subject, and the

changes that it was consequently necessary to make in the administration of justice.

During last year not only was the punishment taken away which Lord Ellenborough thought so essential to the security, in the open day, of the property of every poor cottager, but it was enacted, without any difference of opinion, that even in the cases of burglary at night, where no violence was done or threatened, the penalty of death should not be inflicted. In point of fact, the number of persons capitally convicted had so much diminished during the last few years, that in 1831 there were 50 persons executed; in 1835 there were 34; in 1836 there were 17; and in the last year there were only 8. That number of eight was probably a lower number than there would be in this year or in future years, but it showed a very extraordinary change in the manner in which the law had operated. He had taken the proportion which the number of persons executed bore to the population during the last few years, making his estimate according to the supposed annual increase of the population from 1821 to 1831, and he found the following result:—

Years.	Executed.	Population.
1831	- - 1	in 267,000
1835	- - 1	- - 437,000
1836	- - 1	- - 832,000
1837	- - 1	- - 1,903,000

Without entering into an examination of the grounds on which, both in its theory and practice, the criminal law had been so much mitigated in its severity, he would observe it was evident it could not have been left to a trial at a Quarter Session to decide with regard to a person stealing 5s. in a shop, when it was the opinion of the Lord Chief Justice and the other Judges that any conviction of that offence might be followed by the execution of the capital punishment. The gravity and importance of many of the cases brought before the Quarter Sessions were greatly changed by the act of last year, as well as by some other recent acts; and he did not know that at present there was any certain rule by which the cases to be tried at the Quarter Sessions were to be distinguished from those which were to be tried at the assizes. The bill of last year provided that all offences which were capital previous to that enactment the Quarter Sessions should not try, but that they should be reserved for the assizes; those clauses, however, were struck out during the progress of the bill through the other house of Parliament; but it was at the same time stated that the whole subject required investigation, and the attention of Parliament ought, as soon as possible, to be directed to it. He agreed that it ought, and feeling that there should be an enactment which should distinguish the cases to be tried by the judges from those which should be reserved to the Quarter Sessions, in the measure he proposed to introduce there would be a distinction drawn between those offences to be so tried by the quarter sessions from those to be reserved for the assizes. He did not think the distinction of the offences that now re-

mained capital being left to the assizes would be satisfactory to the public, because, as they all knew, there were many of the offences that were capital no longer, that were of a very important and grave nature, and if the judges did not deal with them, it would probably be considered that they hardly gave that assistance in the administration of the criminal law, which the judges of the land going the circuits, and attending the assizes, ought to be able to give. He would not now state the particular kind of offences that he proposed should be tried by the quarter sessions and by the judges. There was another important consideration which he thought established the necessity of the measure he was introducing to their notice; it was the great number of persons who were now tried at the quarter sessions. He had before him a return of the numbers who were committed for trial at the different Courts in the years 1835 and 1837; it was as follows:—

Assize Courts.

1835 - - 3,408 | 1837 - - 3,466

Local Courts.

1835 - - 3,737 | 1837 - - 4,027

Central Criminal Court.

1835 - - 2,849 | 1837 - - 3,075

But the numbers were at the *Quarter Sessions Courts*—

1835 - - 10,737 | 1837 - - 13,044

Now, he thought it was obvious that the constitution of a Court which had such a very great number of criminals, which tried not less than three times as many as were tried at the assizes, was of the utmost importance. Amongst the other changes lately made in the law was that which allowed prisoners the benefit of counsel in cases of felony. He considered that a very proper alteration, but it was one which must be admitted placed the chairmen of quarter sessions in what many had felt to be a painful and difficult position. Their situation was now undoubtedly closely connected with the administration of justice in our Courts. It was impossible for the chairmen of quarter sessions to allow arguments to be raised by prisoner's counsel, which might mislead the minds of the jury from the true merits of the case, or to take a false view of the nature of the offence, without calmly and plainly setting right those arguments of counsel in their summing up to the jury. He mentioned these facts, because, while he shewed the difficulty of the situation, he established this, that it imposed on the chairmen of quarter sessions the necessity of great readiness, and considerable knowledge of the law, to obviate the inconveniences that the arguments of counsel might otherwise occasion. Another consideration to which he wished to call the attention of the house was, the very long period of imprisonment suffered in the prisons of this country before trial. It appeared from a statement he had made out, the particulars of which he would not go into, that the average

imprisonment of the prisoners under sentence, comprising only those sentenced to be imprisoned, not those sentenced to be transported, was 130 days; and the average term of the imprisonment before trial was 46 days. Taking a considerable period of time, the number was 134,000 imprisoned for 46 days, and about 60,000 for 130 days; so that four days of imprisonment before trial were suffered for every five days by persons who were undergoing their sentence. The average time was forty-six days, being about the period of six weeks. It appeared to him that these several instances established the necessity of their now taking into consideration some improvement in the Courts of Quarter Sessions. It was not fit, he thought, that there should be so many important cases (in former times reserved solely for the judges) brought under the consideration of those Courts; or that so great a number as 12,000 or 13,000 a-year should be left to them, or that there should be so long a period of imprisonment before trial, without some attempt on the part of parliament to remedy the evil. His opinion was, that they ought to enact that the Courts of Quarter Sessions should be, in all cases held twice as often as they now were,—that they should be held every six weeks, instead of every three months; thus, that in every county in England there should be eight of those general sessions, as well as two assizes, making ten Courts held for the trial of offenders in the course of the year. But he certainly did not think that the country could expect that the burdens thus imposed on these Courts of Quarter Sessions, considering the importance of the trials, and the number to be tried, could generally, and for a much longer period of time, be exercised by gentlemen who had not originally had any professional practice in the law. He did not mean, and he hoped he should not be understood to say, that in the discharge of their functions, which had certainly come to be of far more importance than any that were formerly discharged in Quarter Sessions, they had shewn incompetence; he did not put the measure on any such grounds; he had made no statement to prove any such case; but he thought it for the public convenience that there should be the means, if it were considered fit, of having a person of legal education to preside. He did not propose that this measure should take effect at first, without the application of the magistrates attending the Court of Quarter Session. He proposed that on their application, that being notified to the Secretary of State, the crown should be empowered to appoint a barrister of seven years standing, as chairman of such courts. He proposed to connect with this, a further proposition, with respect to which he had a great deal of communication with the Lord Chancellor, and his honorable and learned friends the Attorney and Solicitor General. When Lord Spencer was a member of that House, and before he was in office, he brought forward in three consecutive years, a measure for the improvement

of the County Courts. His object was, that suits for the amount of 10*l.* and under should be tried before those Courts, and that the Courts should be rendered less expensive, and dilatory, and altogether more efficient for that purpose. The noble Lord's bill never passed into a law, and in 1827 a measure, having a similar purpose, was introduced by the Right Honourable Baronet opposite (Sir Robert Peel) who had then lately quitted office. His measure was founded on the same general principle with respect to the improvement of the Courts, and the manner in which the cases were to be tried; the expense was to be little, the process was to be summary, and there was a power to summon not more than five persons to act as jurors. There was a difference, however with regard to the judges who were to try these cases. In his noble friend's measure there were to be certain commissioners as judges named for certain counties. There was another proposition, the nature of which he did not recollect. But the proposition of the Right Honourable Baronet (Sir Robert Peel,) was, that the sheriff should appoint a deputy or assessor, who should act as the judge of the Court. Now it did appear to her Majesty's government, that by adopting in part the principles of these two measures, and by combining the duties of presiding over the civil courts with the functions of the judges who were to act as the judges of the quarter sessions, the county courts might be rendered much more efficient than they had ever yet been. A sheriff, who was an annual officer, holding his office but for the year, would not be considered entitled to give, nor would it be proper that he should give to any person of his nomination, a title to the situation of judge during his life or good behaviour. The inconveniences of such an arrangement were so obvious that he need not detail them. He thought it far better that the judges should be named by the crown, to hold the office for life or during good behaviour. So far his measure was in conformity with the proposals of the commissioners appointed in 1834; they proposed judges of this kind; also, that the large counties should be divided into different districts, and that the judges should sit in the various towns of the same county. He proposed a similar arrangement, viz. that when the magistrates thought it necessary that the county should be divided into districts, an application to that effect having been made and granted by the Crown, the judges should sit once in six weeks in each town of the county, every such town being the capital of the district. He thought that under such an arrangement there would be a very cheap and efficient administration of justice. Persons would not be obliged to be for three or four days at a considerable distance from their homes, and the expense of witnesses and others would be considerably lessened. His noble friend the Lord Chancellor, had a measure which he proposed to introduce into the other House of Parliament. His bill related to an act which he thought was the 3 & 4 W. 4, c. 42, and

which provided for sending issues to be tried before the sheriff that did not go beyond 20*l.* What the Lord Chancellor proposed, he believed, was that the Courts of Westminster should have the power of sending issues to be tried in this manner, to the extent of 50*l.*

Where small counties were joined together, it might be possible for one person to perform these functions for more than one county. Perhaps that principle might be carried to a still greater extent; but experience alone would enable them to determine the matter. He expected that the fees of these Courts for the recovery of debts, would pay a great portion of the expenses of the judges and other officials; but he would say that the county ought to pay out of the county rates a certain sum for the remuneration of the chairman of the quarter sessions. Independently of this, however, he did not propose that any additional burden should be imposed on the county. The calculations of the present expense both of keeping persons for a long time before trial, and of taking witnesses a great distance, had shewn that from 20,000*l.* to 30,000*l.* might be saved, that sum being now lost, and not for any advantage gained in the administration of justice, but merely for the delay of the administration of justice. He hoped, then, that this measure would improve the administration of justice very considerably, and without entailing on the country any great expense. There were other subjects connected with this which would readily occur to honourable gentlemen's minds, and on which, therefore, he would not enter at this moment; but he would avail himself of the opportunity to inform the house that he intended shortly to introduce a bill relating to the present state of the prisons. It was his wish to carry further some changes in our prison discipline that were effected three years ago, in consequence of the inquiries of a committee of the other house; but in his endeavours to accomplish that object, he should like to have the benefit of the labour of a select committee of this House; he should therefore move the appointment of such a committee, and hoped that some gentlemen who were well qualified would assist him in amending the provisions of the measure to which he had adverted. He did not think it necessary to trouble the house any further at this time; he hoped there would be other occasions on which he should be able to communicate to the House some further improvements in the criminal law. He felt that the rapid alteration which had taken place, partly attributable to a change of manners, and partly to legislative enactments, required that we should do something to keep pace with that alteration, rather than endeavour to maintain our institutions exactly what they were in former times. He, in conclusion, begged to move for leave to bring in a bill for the improvement of the county courts of civil and criminal jurisdiction.

PRACTICAL POINTS OF GENERAL INTEREST.

PRIVILEGED COMMUNICATION.

WHERE a person, having from relationship or other good cause, a reason to make a communication respecting another, it will be protected, if *bona fide*, however harsh, hasty, or untrue. This rule was recently laid down under the following circumstances.

The plaintiff was a sharebroker, and the plaintiff and defendant had also been in partnership in the tea trade, but they dissolved their partnership in the year 1835. It further appeared that the wife of the defendant was the daughter of Dr. Taft, a Wesleyan minister, and that in the year 1836, the plaintiff was paying his addresses to Mrs. Taft, who also stated that in the month of July, 1836, she received a letter, which was the subject of the present action, from the defendant, and that she gave it to the plaintiff, who returned it after a copy had been made of it, and that the original letter was then burnt; and when cross-examined, Mrs. Taft said the defendant would receive an accession of property on his second marriage, or when his youngest son comes of age, so that property would the sooner come into the possession of the defendant in right of his wife, by Mrs. Taft's second marriage. The letter strongly advised Mrs. Taft against the marriage, on the ground that she would be "the victim to the plausible artifice of a wicked and artful man;" and stated "that his character in York amongst those who best knew him, was that of an unprincipled trickster. To make money by no matter what means, appears to be his principal object, as he is constantly descending to transactions of that nature, to the meanest artifice and juggle, which an honest man would rather die than be guilty of." In an action for libel, *Alderson, B.*, (in summing up) said, "The question you will have to consider, is whether the writing of this letter, being justified by the circumstances under which it was written, there is anything to shew that the defendant was actuated by malice. In many cases malice is to be inferred from the writing itself; ordinarily the law infers that any one, who, without a justifiable occasion, writes that which is prejudicial to the character of another, is actuated by malicious motives. When, however, there is a justifiable occasion for the communication, the law very properly draws a different line. [The learned Judge then stated the particular circumstances of the case, and continued.] The whole circumstances are before you, and the occasion is one which, *prima facie*, justifies the letter. If, however, the defendant has availed himself of the occasion for malicious purposes, he must answer for what he has done. If, on the other hand, he has used expressions, however harsh, hasty, or untrue, yet *bona fide*, and believing them to be true, he was justified in so doing. It is for the good of all that communications of this kind should be viewed liberally by juries; and unless you

see clearly that the letter was written with a malicious intention of defaming the plaintiff, your verdict ought to be for the defendant. *Verdict for the defendant. Todd v. Hawkins*, 8 Car. & Pay. 88. See also *Wright v. Woodgate*, 2 C. M. & R. 573: and the other cases cited by the reporters in their note.

NEW BILLS IN PARLIAMENT.

OATHS VALIDITY.

The following bill proceeds farther than has ever yet been proposed: authorizing, in fact, the person taking the oath to prescribe the form of it, or to make an affirmation, if he scruples taking an oath.

The following are the proposed enactments:

1. That in all cases in which by law an oath may be administered to any person, either as a jurymen or a witness, or a deponent in any proceeding civil or criminal in any Court of law or equity in this kingdom, or on appointment to any office or employment, or on any occasion whatever, the person swearing is bound by the oath administered, in such form and with such ceremonies as such person may declare to be binding, and may be convicted of the crime of perjury in case of wilful false swearing, in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted.

2. And whereas many persons conscientiously believe that all oaths are unlawful who may yet render valuable service to the state in various employments, and for want of whose testimony the administration of justice may be defeated; be it therefore enacted, that from and after the passing of this act every person who may, as a juror, a witness, or a deponent, in any proceeding civil or criminal in any court of law or equity, or on appointment to any office, or upon any occasion whatever, be now required by law to make oath, shall be at liberty to declare that he conscientiously believes the taking of an oath to be unlawful, and shall thereupon be received to make solemn affirmation in lieu of an oath; and that if he shall upon such solemn affirmation wilfully make any false statement he shall be guilty of a misdemeanor, and on being convicted thereof by due course of law, he shall suffer the same pains and penalties as may be now by any law imposed upon persons convicted of wilful perjury.

On this subject we have received the following suggestion from a correspondent:—

"It would be useful to have a short statement of the manner in which witnesses are to be adjured to give evidence in a Court of Justice, according to the religion or denomination of the witness; as for example: Peers (not to be sworn, but to declare upon honour); Members of Parliament; Christians of all denominations,—Church of England men, Qua-

kers;—Moravians, and all other dissenters from the Church of England, Papists, Jews;—Turks, Deists, Atheists;—The heathen, such as Indians, Africans, Hindoos, &c.;—on what books, or how are they respectively to be sworn or affirm?"

ON CHAMPERTY AND MAINTENANCE.

THE bearing up or upholding of quarrels or sides, to the disturbance or hindrance of common justice, was signified by the general term "maintenance;" *maun tenere*; and when this was done with the view of having a part of the thing in plea or suit, it was then termed "champerty," *cambi partie*, or *campi partitio*,—that is, a sharing of the spoil.

Maintenance was an offence at common law, punishable, by indictment, with fine and imprisonment, or the party might be compelled by action to make satisfaction. Every champerty is maintenance, but every maintenance is not champerty, for champerty is but a species of maintenance, which is the *genus*. In the reign of Edward I., appropriately styled the English Justinian, several statutes were made against maintenance, champerty, and such like offences, and were even directed against the highest officers of the Court, as the chancellor, treasurer, justices, &c., who were forbidden by Art. sup. Chart. c. 11. to take any part in such things, under pain of being punished at the king's pleasure. The buying pretended rights and titles having become very frequent since the introduction of uses, by stat. 32 Hen. 8, c. 9, intitled "The Bill of Bracery and Buying of Titles," none shall buy any pretended right in any land, unless the seller hath been in possession of the same, or of the reversion or remainder thereof, or taken the rents and profits thereof for one year next before; on pain that the seller shall forfeit the land, and the buyer the value; ^a half to the king, and half to him that shall sue within one year. But no conveyance made by one who hath the uncontested possession, and uncontested absolute propriety of lands, is in any way within the meaning of this stat.^b and he who is in lawful possession may purchase the pretended title of any others.

The term *champerty* is thus defined in *Termes de la Ley*, "Champertie is a writ, and lieth where two men be impleading, and one giveth the halfe or part of the thing in plea, to a stranger, for to maintain him against the other, then the party grieved shall have this writ against the stranger." It is said that an attorney ought not to prosecute an action to be paid in gross, for that would be champerty. And by statute 12 Geo. 1, c. 29, it is enacted that, if any one who hath been convicted of common barratry, which bears a near relation to that of main-

tenance, shall practise as an attorney, solicitor, or agent in any suit, the Court shall examine it in a summary way; and if proved, shall direct the offender to be transported for seven years. Champerty is so much abhorred by our law, that it is stated to be one main reason why a *chose in action*, or thing of which one hath the right, but not the possession, is not assignable at common law; because no man should purchase any pretence to sue in another's right.

The several statutes against maintenance, &c. were evidently passed with a view to prevent the rich militating against the poor; for, says Hawkins, practices of this kind are by all means to be discountenanced, as manifestly tending to oppression, by giving opportunities to great men to purchase the disputed titles of others, to the great grievance of the adverse parties, who may often be unable or discouraged to defend their titles against such powerful persons, which, perhaps, they might safely enough maintain against their proper adversary. Maintenance is twofold, technically termed *ruralis et curialis*: one *ruralis*, in the country, as where one assists another in his pretensions to lands, by taking or holding the possession of them for him, or where one stirs up quarrels or suits in the country; the other *curialis*, in a Court of justice, as where one officiously intermeddles in a suit depending in any court which no way belongs to him, by assisting the plaintiff or defendant with money or otherwise, in the prosecution or defence of any such suit. And if any person officiously give evidence, or open the evidence, without being called upon to do it; speak in the cause as if of counsel with the party: retain an attorney for him &c.: or such a person comes to the bar with one of the parties, and stands by him while his cause is tried, to intimidate the jury, &c.; these are acts of maintenance. But a counsel may speak as *amicus curiæ*, and a Court of Record may commit a man for an act of maintenance done in the face of the Court. Anciently it was always necessary for the claimant, if not actually ousted, to enter and seal a lease upon the premises, for the purpose of trying his title in ejectment: it being deemed an offence by the old law of maintenance, to convey a title to another, when the grantor himself was not in possession.^c And it was made a rule of court in the King's Bench and Common Pleas, for the prevention of maintenance and brocage, that "no attorney shall be lessee in ejectment." A master may maintain, that is, abet and assist, his servant in any action at law against a stranger; and he may also bring an action against any man for beating or maiming his servant, without being guilty of maintenance; but in such case he must assign as a special reason for so doing, his own damage by the loss of his service, and this loss must be proved upon the trial. This is an action upon the case, generally called a *per quod servitium amisit*. A man cannot be guilty of maintenance in respect

^a *Semble*, How can the seller of a pretended right to land, forfeit the land itself?

^b Hawk. c. 88, s. 15.

^c Ad. Ej. 2d edit.

of any money given by him to another, before any suit is actually commenced, nor for giving money to a poor man to enable him to carry on his suit. And whoever in any way of kin or affinity to the party, may counsel and assist him, but that he cannot justify the laying out any of his own money in the cause, unless he be either father, son, or heir apparent.^d It seemeth to be agreed that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title, they may maintain one another in a suit relating to the same. Maintenance is not only *malum prohibitum* by statute, but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression, and the offence is *now* punishable by indictment with fine and imprisonment, or the party aggrieved may obtain compensation by action. W. H.

PROFESSIONAL GRIEVANCES.

FEES OF COUNSEL.

Sir,

Among a numerous and generally respectable and intelligent body of men, whether of the legal or any other profession, there must, in compliment to the solar luminary, be found some black spots. And thus throughout the whole range of attorneys and solicitors, certain black sheep of the profession will intrude themselves, and in almost every transaction betray the cloven foot. Yet, Sir, however earnest the public may be to see such men excluded from the profession, to which they are a shame and disgrace, I well know that there are no persons who would exult at their expulsion more than the honest reputable practitioner himself. How often is the most honourable and well-disposed solicitor compelled to hear the whole tribe and community of his profession abused in general and sweeping vituperations by reason of a race of beings, whose sole object in entering the profession is on account of the vast and attractive prospect it holds out to their avaricious views of speedy aggrandizement, which, whenever the opportunity offers, they eagerly embrace, without regard for the interest of their luckless client, or respect for the honour of their brethren.

I have been induced to make these complaints to you from the knowledge of your patient attention to all lamentations which cry for justice; and how earnestly you labour by making public every abuse in the law to redress them. Sir, I have been, I will not say how many years, a barrister, and have to my sorrow and loss felt the baneful effect of these gentlemen whom I venture at this time to bring before your notice. You are aware that our fees are what are denominated *honorary*—that is, like the physician, we cannot demand or sue for them at law. This being the case—what effect has this circumstance on the mind

of the upright honourable attorney? Why, this:—“Since it is a debt not only of honour but of honesty, let me not seem to take advantage of the law when the debt is deservedly due. Let me not, by refusing to pay the barrister’s fees, after I have employed him, (or what amounts to the same thing), putting him off from time to time, from year to year, show to the profession, and the world at large, that I would not be honest at all, if the law did not compel me to be so. I will, therefore, show myself a man of honour upon principle, and not of compulsion, by strictly paying those fees, whether compelled by law or not.” Now, Sir, reverse the medal, and let us hear the language and arguments of the dark side of the profession. “Oh! it is true my barrister has had me on his books for years, and I have long ago charged my clients the fees for counsel, but I shall give myself no trouble to pay them, *because they are only honorary*—he cannot sue me for them—therefore, why should I pay them? A barrister ought not to want money, he ought to be a man of fortune before he enters the profession.” In other words, Sir, a barrister must expend a vast sum upon his education—must at a considerable expense keep up an establishment in the way of chambers, clerk, &c.,—must by his ancestor’s industry be in the possession of a handsome income—and must have spent years of anxious toil in acquiring a knowledge of the most difficult profession, and for what purpose? Why, for no other than the honour of calling these men clients—of fagging out his best years in their cause—of placing them on his books, where they may remain till doomsday—of adding fee after fee to their account, which never are, and never were intended to be paid, because, forsooth, they are not compelled by law to pay them.

Having thus stated the grievance, I now proceed to offer my ideas of the partial remedy which might be adopted in respect to the better and more regular payment of the fees to barristers.

As the Law Society seems to have been incorporated (among many other useful purposes), for that of preserving the respectability of the profession, and that all abuses might be freely discussed, examined, and if possible removed, I would suggest the following plan, which might, if acted upon, prove not only beneficial to the members of the bar, by awarding them their just claims—but also tend to keep up a mutual and friendly intercourse between them and their clients, the solicitors and attorneys.

That the Law Society, as protectors of the respectability and integrity of their branch of the profession, should come to a resolution that fees to counsel, being *honorary* payments, ought to be discharged within a limited period after the amount has been ascertained. That such resolutions should be notified to the practicing solicitors generally, and that a communication should be made to the members of the bar, accompanied with a copy of the re-

^d 1 Hawk. c. 83, s. 20.

solutions, requesting that the names of those solicitors, who did not pay the amount of their fees, within the period pointed out by the Incorporated Law Society, should be notified by their clerks to the society, in order to their being recorded and exposed to view in the public room in the Law Society.

This method will, I apprehend, leave it still to the option of counsel whether they will expose the names of their clients or not. There will of course be a running general account kept up between a barrister and his clients, whom he knows well, and in whom he can confide—but it gives him the only remedy he has against certain sharking members, who have crept into the profession, and whose notorious practice is to run up a decently long account, first with one barrister, and then with another, without an intention of discharging these accounts, and without any possible restraint; inasmuch as their malpractice cannot be made known by reason of its not being ascertained whom among the honourable members of the bar such a worthy character next delighteth to honour.

I have thus far troubled you, Mr. Editor, from the conviction that a reformation so desirable should be first moved on the part of solicitors themselves, or, which is the same thing, their Congress in Chancery Lane.

F.

[If by the means suggested, or by any other means, the "black sheep" could be prevented from entering or continuing in the fold, and bringing disgrace on the whole flock, it would be "a consummation devoutly to be wished." Our first impression on reading the complaint of our correspondent, was, that the members of the bar had the remedy in their own hands, and by refusing to act for the persons complained of, the evil would be stopped; but on further consideration we incline to think that counsel have not sufficient means of ascertaining the respectability of attorneys. We understand that there are several notorious practitioners who not only misconduct themselves in their own business, but enable unqualified persons to transact business in their names:—one certificate thus serving several persons. There is, however, great difficulty in obtaining sufficient evidence to convict the parties; and the Judges, as shewn by several recent cases, require the strictest proof before they will strike an attorney of the roll. We think that on a *prima facie* case being made out, the Judges should refer it to one of the Masters to inquire into the facts, and examine the accused parties. Instead of which, they allow technical objections to prevail as between suitors; and have determined not to call on an attorney to answer matters alleged against him unless positively sworn to. Ed.]

USAGES OF THE PROFESSION.

COPYHOLD PRACTICE.

Sir,

As steward of a manor, I have lately been called upon to grant a deputation for the convenience of parties to take a surrender in the country, and as a matter of course accompanied it with a surrender to be so taken. The solicitor for the purchaser, however, objected to my preparation of the surrender as steward, insisting on his being entitled to prepare it himself; in consequence of which I at once refused to deliver over the deputation, conceiving that under such circumstances, no solicitor could have been found who could set up such a claim.

It being my wish not to act either uncourtously or unprofessionally to my professional brethren, I shall feel obliged by the sentiments of your readers, conversant with the subject, whether the solicitor for the purchaser was of right entitled to prepare the surrender, and require a deputation from the steward to take it.

My own practice has invariably been to allow the stewards of the manor to prepare both the surrender and deputation.

A STEWARD OF A MANOR.

SELECTIONS FROM CORRESPONDENCE.

To the Editor of the Legal Observer.

JUDGES' POWER TO STAY PROCEEDINGS ON TERMS.

Sir,

In reference to this subject I beg to say, that having for many years had considerable experience in a Court of Requests in the immediate vicinity of London, I have in innumerable instances seen the advantage of the power given to the commissioners to order payment of debt and costs by instalments, suiting the circumstances of the debtor; and I could wish that in cases of debts not exceeding 20*l.*, or 30*l.*, power was given to a Judge at Chambers to order payment of the debt and costs by instalments according to the ability of the defendant; the defendant either confessing a judgment for its better security, or finding other security for the fulfilment of his engagements.

I entertain a strong opinion that such a course would operate beneficially for both parties, and prevent that ruin which in too many cases is brought upon a man and his family by taking his goods or his person in execution to satisfy an inexorable creditor.

The subject is well worth the attention of the Incorporated Law Society. At all events I feel assured that the suggestion cannot be attributed to the desire to enhance costs, which is too often unjustly charged against the profession.

A SOLICITOR.

LIST OF SHERIFFS, UNDERSHERIFFS, DEPUTIES, AND AGENTS, FOR 1838.

[From an Authentic List, with several useful Notes, published by Richards & Co., 194, Fleet Street, price 1s.]

ENGLAND.

COUNTIES.	SHERIFFS.	UNDERSHERIFFS.	DEPUTIES AND AGENTS. <i>Office Hours, the same as at Seal Office.</i>
<i>Bedfordshire</i>	John Harvey, of Ickwell, Esq.	Samuel Veasey, Baldock	<i>Dep.</i> T. Graham, 3, Mitre Court Chambers.
<i>Berkshire</i>	{ Winchcombe Henry Howard Hartley, of Buck- lebury Cottage, Esq.	Robert Fuller Graham Newbury {	<i>Dep.</i> Meggison & Co., 2, King's Road, Bedford Row.
<i>Berwick-upon-Tweed</i>	John Clave, Esq., Berwick-upon-Tweed	Roh. Weddell, Berwick-on-Tweed	<i>Dep.</i> Bridges & Mason, 28, Red Lion Square.
<i>Bristol (City of)</i>	Thomas Kingston Bailey, Esq., Bristol	Hare and Little, Bristol	<i>Dep.</i> Thomas W. Nelson, 1, New Court, Temple.
<i>Buckinghamshire</i>	Rice Rich. Clayton, of Hedgerley Park, Esq.	Thomas Tindal, Aylesbury	<i>Dep.</i> Pickering & Smith, 4, Stone Builds, Lin.-Inn.
<i>Cambridgeshire & Hunts.</i>	William Layton, of Woodhouse, Ely, Esq.	T. Archer, Ely	<i>Ag.</i> Thomas Kirk, 10, Synond's Inn.
<i>Canterbury (City of)</i>	Thomas T. D. Lasaus, of Canterbury, Esq.	Thomas Wilkinson, Canterbury	<i>Dep.</i> John Cole, 4, Adelphi Terrace.
<i>Cheshire</i>	{ George Cornwall Legh, of High Legh, Esq.	{ James Roscoe, Knutsford	<i>Dep.</i> Philpot & Son, 3, Southampton St. Bloomsbury
<i>Chester</i>	His Grace the Duke of Wellington	{ J. B. Hostage, Chester, Ant. U.S.	<i>Ag.</i> Egan & Waterman, 23, Essex Street, Strand.
<i>Cinque Ports</i>	Joseph Thomas Austen Trefry, of Place, Esq.	John Fincheit Maddock, Chester	<i>Dep.</i> Henry Coode, 8, Guildford St., Russell Sq.
<i>Cornwall</i>	Charles Harris, Esq., Coventry	Edward Coode, jun., St. Austle	<i>Dep.</i> Austen & Hobson, 4, Raymond Buildings.
<i>Coventry (City of)</i>	John Dixon, of Knells, Esq.	Troughton and Lee, Coventry	<i>Dep.</i> W. T. Clarke, 2, Great James St., Bedford Row.
<i>Cumberland</i>	Edw. Anth. Holden, of Acton-on-Trent, Esq.	William Nanson, Carlisle	<i>Dep.</i> Austen & Holson, 5, Raymond Buildings.
<i>Derbyshire</i>	{ Sir John Leman Rogers, of Blatchford, Bart.	{ Wm. Dewes, Ashby-de-la-Zouch	<i>Dep.</i> Brutton & Clipperton, 17, Bedford Row.
<i>Devonshire</i>	Rich. Brinsley Sheridan, of Frampton-house, esq	{ W. E. Mousley, Acting U. S.	<i>Dep.</i> Pearson, 22, Essex Street.
<i>Dorsetshire</i>	Sir Rob. Johnson Eden, Bart., of Windleston	Charles Brutton, Exeter	<i>Dep.</i> J. Griffith, 6, Raymond Buildings.
<i>Durham</i>	William Cotton, of Wallwood in Leyton, Esq.	Thomas Griffith, Durham	<i>Dep.</i> T. W. Nelson, 1, New Court, Temple.
<i>Essex</i>	Joshua Hickman Stabback, Esq.	Wasey Sterry, Romford	<i>Ag.</i> Keddall & Baker, 36, Fenchurch Street.
<i>Essex (City of)</i>	Edward Sampson, of Henbury, Esq.	John Slagdon, Exeter	<i>Dep.</i> White & Whitmore, 11, Bedford Row.
<i>Gloucestershire</i>	James Mance Shipton, Esq.	John Burrup, Gloucester	<i>Do.</i>
<i>Gloucester (City of)</i>	{ And. Robert Drummond, of Cadlauds, South- ampton, Esq.	<i>Do.</i>	<i>Do.</i>
<i>Hampshire</i>	Robert Biddulph Phillips, of Langworth, Esq.	Woodham & Seagram, Winchester {	<i>Dep.</i> Hicks & Braikenridge, 16, Bartlett's Buildings.
<i>Hertfordshire</i>	Claude Geo. Thornton, of Tewin, Esq.	F. L. Bodenham, Hereford	<i>Dep.</i> Simpson & Moor, 5, Furnival's Inn.
<i>Hertfordshire</i>	Thomes Turner Alkin, of Hunton Court, Esq.	Nicholson & Longmore, Hertford {	<i>Dep.</i> Palmer & Co., 24, Bedford Row.—Hours, in Term, 11 to 5. In Vacation, 11 to 3, except be- tween Aug. 10 and Oct. 24, and then from 11 to 2.
<i>Kent</i>		Wm. H. Palmer, 24, Bedford Row {	

SUPERIOR COURTS.

Rolls.

PRACTICE.—PARTIES.—HUSBAND AND WIFE.
—MISJOINDER.

It is a misjoinder of parties to make a husband co-plaintiff with his wife in a suit regarding her separate estate, and a bill so framed is demurrable. The husband may be properly made a party defendant for the protection of the other parties to the suit.

This was a demurrer to a bill filed by Bernard John Wake and Harriet his wife, and their children, by the said Bernard John Wake as next friend of such of them as were infants, against the executors and trustees and legatees named in the will of Adamson Parker, for the purpose of establishing the said will and carrying the trusts thereof into execution; and for an account, &c. The testator, who died in August last, by his will, dated in the month of July preceding, devised and bequeathed his real and personal estate to his executors in trust to divide the same into five equal parts, and to give one of such parts to each of his three sons in his said will named, and to their heirs respectively; and as to the two remaining fifth parts, in trust to pay the rents, dividends, and profits of one-fifth thereof to his daughter Harriett, (the plaintiff,) for her separate use for her life, but not by anticipation; and after her death, to divide the said part among her children, share and share alike, and to pay the rents, &c. of the other fifth part to the testator's daughter Helen, and after her death to her children, &c. The bill prayed for an account of the estate, and that the same may be put in due course of administration, &c. Some of the defendants demurred to the bill for want of equity, and for misjoinder of the husband as co-plaintiff with the wife.

Mr. *Kindersley* and Mr. *Bacon*, in support of the demurrer.—This was in effect the husband's suit, who took no interest, present or future, in the wife's estate under the will. The wife might hereafter, by her next friend, institute another suit against the defendants. Parties ought not to be thus exposed to the annoyance and expence of two suits. They cited *Hughes v. Evans*,^a *Reeve v. Dalby*,^b *Sigil v. Phelps*.^c

Mr. *Pemberton* and Mr. *Tillotson*, in support of the bill. There could be no objection to join the husband as plaintiff with the wife, when they had no dispute or adverse interests. Why could not the husband sue as the wife's next friend, and next friend of their infant children? Some one should be joined with the wife to be liable to the costs to the defendants. There was no principle to prevent the husband from being so joined.

Lord *Langdale*, M. R., said the question was

^a 1 Sim. & Stu. 183. ^b 2 Sim. & Stu. 464.
^c 7 Sim. 239.

SOUTH WALES.		Dep. J. & J. Gregory, 12, Clements Inn.
William Ives, Brecon		
Charles Bishop, Llandovery		Dep. J. & J. Gregory, 12, Clements Inn.
Lewis Moras, Carmarthen	{	Ag. H. C. Chilton, 7, Chancery Lane.
Oliver Lloyd, of Cardigan		Ag. Jeyes & Co., 69, Chancery Lane.
NORTH WALES.		
William Jones, Llangefn		Dep. Weeks & Gilbertson, 12, Cook's Ct., Linc. Inn.
Wm. Lloyd Roberts, Carnarvon	{	Ag. Lowe & Co., Southampton Build. Chancery Lane.
R. Williams, Vale Street, Denbigh		Dep. E. Edwards, 4, Furnival's Inn.
Charles Walter Wyatt of St. Asaph		Dep. Bloxam & Co. 2, Lincoln's Inn Fields.
Fay, Ruthin		Jones & Parker, 3, Pump, Court, Temple.
John Williams, Llanfyllin, near	{	Dep. Blower and Vizard, 61, Lincoln's Inn Fields.
Oswestry		

Warrants are granted in Town, except for Canterbury, the Cinque Ports; Southampton, and Carmarthen.

Breconshire	James Duncan Thomson, of Sunnysbank, Esq.
Cardiganshire	William Tilsley Jones, of Gwynfryn, Esq.
Carmarthenshire	Howel Gwyn, of Blaenawddde, Esq.
Carmarthen (Co. of)	{ Benjamin Davies, Esq.
Borough of	{ N. V. & Edwards Vaughan, of Lanelay, Esq.
Glamorganshire	{ John Colby, of Ffynone, Esq.
Pembrokeshire	{ Sir John Dutton Colt, of Llanyne, Bart
Radnorshire	{ William Barton Pantoll, of Garreglwyd, Esq.
Anglesea	{ Sir Richard Bulkeley Williams Bulkeley, of
Carnarvonshire	{ Plasnant, Bart.
Denbighshire	Samuel Sandbach, of Hafadunos Abergele, Esq.
Flintshire	Ed. Morgan, of Golden Grove, Holywell, Esq.
Merionethshire	John Manners Kerr, of Plas Issa, Esq.
Montgomeryshire	Martin Williams, of Brougwynn, Esq.

of great importance as regarded the practice of the Court, and he wished to take time to consider it.

His Lordship, on a subsequent day, gave his judgment.—The testator had devised and bequeathed an equal fifth part of his real estate, and of his residuary personal estate to the plaintiff Mrs. Wake, for her separate use during her life, and after her death then to the children, in equal shares. The bill had been filed by Mr. and Maa. Wake and their children, two of whom were infants suing by Mr. Wake as their next friend, against the trustees and executors and other devisees and legatees of the real and personal estate, for the production of the usual accounts, and for the payment to Mrs. Wake of the interest of her proportionate share of the residuary personal estate ; and for securing that share to her children. Two of the defendants, both residuary legatees, and one a trustee and executor, had put in a general demurrer to the bill for want of equity, the grounds for which were, that the husband having no interest in the separate estate of the wife, had therefore been misjoined with her as plaintiff. Courts of Equity from an early period, had permitted married women to sue for their separate estate by their next friend ; and a married woman being, as to her separate estate, regarded in the character of a *feme sole*, the Courts had been governed by the principle that in the prosecution of all such suits, the consent and authority of the wife, as an act perfectly independent of the husband, was requisite. A suit instituted and prosecuted by the husband and wife, had been viewed as the suit of the husband alone, and *prima facie* at least, the wife could not be said to have any authority or controul over the proceedings. The wife, however, might clothe her husband with the necessary authority to prosecute the suit, but in the absence of any document to show that such authority had been so given, the suit must in all respects be considered as the suit of the husband alone. Undoubtedly it had been the custom to file such bills, and numerous claims had been made without objection in suits which had been instituted by the husband and wife jointly for the wife's separate estate, the Court itself at the same time taking care that the separate estate of the wife, when recovered, should be protected from the controul of the husband. It had been laid down by Lord Hardwicke, that when there was anything to be recovered for the separate use of the wife, the course which ought to be pursued was, that a bill should be filed by her next friend for her, otherwise it would become the bill of the husband. On the other hand, a husband having the power to use the wife's name, might happen to file a bill without her knowledge, and prosecute the same unfavourably and with prejudice to her interests. It had been argued, that the authorities did not apply to a case wherein there was no dispute between the husband and the wife, and they had not adverse interests ; but after a due consideration of the cases, as cited, he was of opinion that they did

not admit of such a distinction. Not merely ought the wife to be protected in the enjoyment of her separate property, but parties also ought to be protected against the concurrent and consecutive demands of a husband suing in the name of the wife, and the wife suing by her next friend. If such suits were to be allowed, it was clear and obvious that an extensive field would be laid open for the exercise of oppression upon parties by the husband and wife, acting in concert in different suits. After carefully weighing the several cases referred to, he had, although not without considerable reluctance, come to the conclusion that he ought to allow the demurrer. It was with extreme reluctance that he had arrived at that result, inasmuch as he thought suits thus constituted, were of familiar occurrence, and that as he was fully aware many orders had been made in them without the least inconvenience arising. He was likewise of opinion, that in cases where the husband and wife were not hostile to each other, very little, if any additional security, was obtained by the wife by the appointment of a next friend, the probability being, that in such cases, the next friend was nominated by the husband. Taking these views of the matter, he felt himself called upon to allow the demurrer without costs, but to give leave to amend the bill by striking out the name of Mr. Wake as plaintiff and next friend of the infant children, and making him a defendant ; and by inserting the name of some other person as the next friend for the wife and infant children.

Wake and wife v. Parker and others, at Westminster, January 15th and 29th, 1838.

Queen's Bench.

[Before the Four Judges.]

CHARITABLE CORPORATION.—SETTLEMENT.

An act of parliament which confirms the charter of a charitable corporation, and declares that the premises of that corporation shall at no future time be liable to any higher rate of assessment, than that which exists at the time of such act being passed, does not thereby make the site of those buildings extra parochial.

Where a charitable corporation had made certain rules as to the reception of objects of its bounty, and by the negligence of a gate porter, a servant of the corporation, a child not properly sent and accepted according to such rules, was brought within the limits of the buildings used by the corporation, such corporation did not thereby become liable for the maintenance of such child, but such child was entitled to relief as casual poor, being found deserted and exposed within the limits of the parish.

This was a proceeding upon a *writ* issued on the application of the Governors of the Foundling Hospital, and had been directed to the defendants, commanding them to receive and maintain a child as casual poor, such child having been found deserted and

exposed within the parish. The defendants on the return to the *mandamus* raised the question of the liability of the parish to receive and maintain the child, and that question came on to be tried before Mr Justice Coleridge, at the sittings after last Michaelmas Term, when the following facts appeared in evidence. The Foundling Hospital is locally situate within the parish of St. Pancras, and the admission of children into the hospital is regulated by rules laid down by the Governors. In the month of May 1837, a female came to the gate of the Foundling Hospital at between 10 and 11 o'clock in the morning, and rang the bell. The porter opened the gate, and she gave into his hands a basket, which she desired him to take up to the secretary's office. The porter asked her to step into the lodge while he went to fetch some one to carry up the basket, as he said that he must not leave the gate unattended. He then went a few yards off to the school, to find some boy to take up the basket, and when he returned to the lodge he found that the woman had gone away, but had left the basket. He then perceived the basket move, and on opening it found that a living male child was within it. He ran out after the woman, but she had disappeared, and he could get no information respecting her from the hackney coachmen on the stand in the front of the Hospital. The child was afterwards taken to the secretary's office, but as it had not been presented to the hospital, and received according to the rules and directions made upon the subject by the governors, they sent it to the parish workhouse, where, however, it was refused admission, and was then put out to nurse at the expence of the hospital till the question of liability should be decided. It was proved on the part of the defendants, that the hospital was founded about the year 1739, under a charter of Geo. 2, and that immediately after the grant of the charter, an act of parliament, 13 Geo. 2, c. 29, was passed, reciting and confirming the charter and enlarging the powers thereby granted to the "Governors and Guardians of the Hospital for the maintenance and education of exposed and deserted young children." By that act, the land on which the hospital was built, though locally situated within the parish of St. Pancras, was declared to be liable only to the parochial rates or assessments then levied within the said parish, and not to any greater assessments that might be imposed on the parish at any future time. The 5th section directed that no churchwarden or overseer of the poor should prevent children from being brought to the hospital from any other parish whatever, but all children brought to the hospital and there received, were prevented from gaining a settlement in the parish. Under these provisions it was contended for the defendants, that the hospital was taken out of the parish, and that the receiving of children and their subsequent management, had been left entirely in the hands of the governors of the hospital; that the parish officers had no right to interfere with them, and that they had

no authority by any wilful act, nor by any negligence of theirs, to throw on the parish the burden of maintaining any child. Mr. Justice Coleridge told the jury, that in his opinion there had been no reception of the child by the governors of the hospital; that they were not therefore bound to maintain it; that the child was in the terms of the act of parliament "exposed and deserted," and being found within the limits of the parish in that state, became one of the poor of the parish, requiring to be supported out of the parochial funds. His Lordship further held, that the provision as to the payment of rates, did not take the hospital out of the parish, within the limits of which it was locally situated. Under his direction therefore, the jury found that the child had not been received into the hospital, and returned a verdict for the Crown.

Sir W. Follett on behalf of the defendants moved to set aside this verdict and have a new trial. In the first place, it is clear that this child was received in the hospital. The porter was the servant and agent of the governors; he received the child. If he received it in an improper manner, that is a subject in respect of which he is answerable to them as their servant and agent; but at all events, his negligence cannot cast a burden on the parish; the persons who employ and trust him, must take the consequences of his negligence. In the second place, this child being left where it could be amply provided for, was not exposed and deserted, or if so, was exposed and deserted within the hospital, which therefore, became liable to maintain it. For such a purpose the hospital was like a parish in itself. The act of parliament which confirmed its charter, took it out of the parish within which it was locally situated, and for all the purposes of this act the hospital was as unconnected with the parish of St. Pancras, as with any other parish in the kingdom.

Lord Denman, C. J.—This case appears to me to have been very correctly left to the jury. This child must be received by the parish as casual poor, unless the parish can throw the burden of its maintenance somewhere else. In order to do that the parish should shew a direct liability in some other body of persons to maintain the child. I do not think that that has been done here. The hospital is a part of the parish—the child is found within the limits of the parish, without the means of support. The hospital is not liable to support the child, because the act of parliament only calls on it to support the children which it has received. But this child was not received by the hospital; and it is clear that that body has the power of receiving or rejecting children. It exercises this power under certain regulations, which were not complied with in this case; and the child not having been received in the hospital, the burden of its support has not been thrown on that institution.

Mr. Justice Littledale.—This child cannot be considered as having been received by the hospital. If the hospital was pulled down, the

place on which it stands would be part of the parish. It is so now, although as long as the hospital stands and children are received there, the hospital is liable only to pay such rates as were demandable when the charter was first granted. In both respects I think that the case was properly left to the jury.

Mr. Justice *Williams*.—I am entirely of the same opinion. There is no provision in the act that the hospital is to be extra-parochial. The provision as to the payment of rates is a mere matter of regulation, which certainly does not take the hospital out of the parish. On the other point it seems to me that the act of parliament shews that there must be some act of adoption by which to mark that the child had been intentionally received. There is nothing of the sort here, for the child was taken in at the gate without the knowledge of the officers of the hospital.

Mr. Justice *Coleridge*.—It is clear that the site on which the hospital stands is not extra-parochial. On the contrary, it is within the limits of the parish, and the hospital is liable to the payment of parochial rates, though under a bargain made with the parish it pays no other or higher rates than were payable many years ago, when the bargain was made. There must be a clear and distinct reception of the child in order to make the hospital liable for its support. The act of parliament has the words "in case the hospital shall think proper to receive the same child." I am quite satisfied with the verdict, and think that there could not properly have been any other verdict, as there was nothing like a receiving in any reasonable sense of the word.

Rule refused.—*The Queen v. The Directors of the Poor of St. Pancras*, H. T. 1838. Q. B. F. J.

Queen's Bench Practice Court.

SECURITY FOR COSTS.

An affidavit stating the belief of the deponent that the plaintiff is residing abroad, is not sufficient to entitle the defendant to a rule calling on the plaintiff to give security for costs.

Denman *Whatley* moved for a rule, calling on the plaintiff to shew cause why he should not give security for costs in the action. The affidavit on which he moved alleged that the plaintiff was a benefited clergyman, and that it was "believed" that he was residing abroad. Applications had been made to the attorney on the record, who refused to give the address of his client, but asserted that he was in this country.

Patteson, J., said, that to grant the rule on the affidavit produced would be quite useless; because the affidavit of the attorney that the plaintiff was residing in this country would be a sufficient answer to it.

D. Whatley submitted, on the authority of *Oliva v. Johnson*, 5 B. & Ald. 908, that such an affidavit would not be a sufficient answer. There it was held that, when a plaintiff was

shewn to carry on business abroad, and to have no permanent residence in England, but to be in England at the time of bringing the action, and was sworn that he had no intention to leave the country, no sufficient answer was given to an application for security for costs, because there was no distinct allegation of his residing and intending to reside in England.

Patteson, J., said that that was a case of a foreigner, from which the present case differed. A rule, however, might be taken, calling on the attorney to give the residence of his client.

Rule accordingly.—*Sandey v. Hokler*, H. T. 1838. K. B. P. C.

EJECTMENT.—COUNTRY CAUSE.

Where in a country ejectment the notice is to appear in one term, judgment may be obtained against the casual ejector in the following term, without a rule nisi in the first instance.

Martin moved for judgment against the casual ejector. The notice called on the tenant to appear in the last term. It was a country cause, and there was some doubt whether a rule nisi should not be obtained in the first instance.

Patteson, J., said that as it was a country cause, judgment might be taken without a rule nisi.

Rule absolute.—*Doe d. Croom v. Roe*, H. T. 1838. K. B. P. C.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.
[This bill stands for second reading.]

For Exchanging Lands in Common Fields.
Lord Ellenborough.

[This bill is in Committee.]

For the better Regulation of Watermen and Steam Boats on the Thames.

[For second reading.]

To remove doubts as to the validity of oaths, and to substitute affirmations.

Lord Denman.

[This bill waits for second reading.]

To regulate the Payment of Rates of Parliamentary Electors, and the Admission Duty of Freemen.

[This bill waits for second reading.]

House of Commons.**ADMINISTRATION OF JUSTICE.**

For the improvement of County Courts of Civil and Criminal Jurisdiction.

Lord John Russell.

[Leave has been given to bring in this bill.]

To provide for the access of Parents, living apart from each other, to Children of tender age.

Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[This bill stands for second reading on 11th April.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.

Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts.

Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

To provide for international Copyright.

Mr. P. Thomson.

To regulate the office of Sheriff, and diminish the expenses.

Col. Davies.

LAWS OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases.

The Attorney General.

[These bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent

of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To amend the 6 & 7 W. 4, for facilitating the Inclosure of Open and Arable Fields in England and Wales.

Lord Worsley.

[This bill stands for second reading on the 7th March.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel.

Mr. O'Connell.

LAW OF PARLIAMENTARY ELECTIONS.

To prevent threats to voters, or attempts at intimidation.

Mr. Slaney.

[This bill stands for second reading.]

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament.

Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill stands for second reading.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

[In Committee.]

Mr. Warburton.

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

[For second reading.] Mr. Hume.

DESTRUCTION OF DEEDS AND PAPERS IN THE FIRE AT THE TEMPLE.

WE do not deem it proper,—certainly not at present,—to report the various statements relating to the cause and results of the lamentable destruction by fire of part of Paper Buildings, in the Temple, on the morning of the 6th instant. It can do no good to repeat the names of individuals who may be blameable for imprudence, or who have suffered for want of the precaution of having fire-proof closets. Accidents of this kind rarely occur in the Inns of Court: it is nearly sixty years, we understand, since a fire happened in the Temple. It is obvious also, that no amount of insurance-money can compensate for the loss of papers and documents. In some instances the loss may not be discovered until it be too late to supply secondary evidence. There is no doubt, however, that the utmost liberality will be shewn by the professional opponents of those whose papers have been destroyed.

Some of the sufferers have been accommodated in the rooms of the Law Institution, until they can obtain other chambers, and the alarm which has been excited has occasioned a demand for the remaining Fire-Proof Muminent Rooms of that establishment. It appears that the Society is also enabled to receive the deposit of separate boxes of deeds, which are kept in the manner usually adopted at banking-houses.

The loss which has thus occurred in the Temple, and the recent loss of valuable records in the Lord Mayor's Court Office, by the destruction of the Royal Exchange, will probably lead to some improved measures for the preservation of valuable deeds and papers. At the Bank of England the account books and papers, which are of peculiar value, are wheeled away to places of security every night and brought back in the morning.

It will not be deemed inappropriate that we take this occasion to advert again to the necessity of removing all the Law Offices now scattered in different parts of the Temple, Lincoln's Inn, and other places, to one commodious building, where the records and documents may be securely placed, and the business of the offices conveniently transacted. The fire, scarcely yet subdued, might have extended to the Master's Office and the Queen's Bench Office, and de-

stroyed the invaluable books of record and files of proceedings in hundreds of thousands of actions. The importance of these depositories will be immediately understood when it is recollected that here, and here only, the practitioner can search for judgments which may affect the title to all the lands in the kingdom. We may admit that other evidence might be obtained, and a new record of judgments prepared, but at what labour and expense must this be obtained, and with what delay, and at what loss and inconvenience in the mean time, none can compute.

We would suggest to those who are interested in obtaining a union of the Law Offices under one roof, to seize this opportunity of urging the attention of Government to the subject. We have repeatedly pointed out that the Rolls garden is the proper *locus in quo*; and the whole of the Rolls Estate being now vested in the Crown, no obstacle can exist to immediately commencing a suitable building for the Masters and all the other Officers of the three Common Law Courts.

THE EDITOR'S LETTER BOX.

G. H., a correspondent whose letter on the subject of Legal Examination Honors appeared at p. 296, *ante*, observes that "after the lengthened discussion to which the propriety of these distinctions has given rise, and the publication of the able arguments on both sides in this journal, it would be better to let the Examiners take whatever course they, in their judgment shall deem best; and under their superintendence, and with their experience, there can be little doubt of their pursuing a plan which shall have for its object the welfare of the profession, and the public benefit." Following out this opinion, our correspondent will permit us to postpone his further remarks, at all events, for the present.

A correspondent relating to Law Lectures, should address his complaint to the proper official quarter where the lectures are delivered. We thought that the arrangements had been quite satisfactory; and have no doubt that any suggested improvement will be duly considered.

In order to reconcile the 23d with the 26th section of the Reform Act, we are compelled (says a correspondent), to suppose that a *trustee* can be in receipt of the rents and profits of an estate *for his own use*; and he will be much obliged if any of our correspondents would mention an instance in which a *trustee* can be so beneficially interested.

The Legal Observer.

SATURDAY, MARCH 17, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE BILLS FOR ALTERING THE LAW RELATING TO COPYHOLDS.

THE Attorney General has at last introduced his Bills relating to Copyholds. They are five in number, but we only propose to consider the three first, which have been read a second time, and referred to a Select Committee. Sir Edward Sugden, with some petulance, has declined to serve on it; but we think, nevertheless, that it is a good and impartial Committee,* and well qualified to do justice to this important subject. The remaining two bills will probably not be pressed in this Session.

The Bills now before us are—1. A Bill to facilitate the Enfranchisement of Copyholds and Customary Tenures; 2. A Bill for the Amendment of the Law relating to Lands held by Copy of Court Roll; and 3. A Bill to authorize the identifying the Boundaries of Manors and Lands, where such Boundaries are confused or unknown.

1. Our readers are aware that, according to the existing law, no lord of the manor, having a particular partial estate, can enfranchise copyholds; and it is usual, to obviate this inconvenience, to insert powers in settlements of property of this description, giving them this power. The present bill proposes to enable every lord of the manor having a particular estate to enfranchise, whether he shall be seised in possession or remainder or reversion expectant on an estate for years. So a copyholder, having a particular estate of the same nature, is to be enabled to obtain the enfranchisement of his lands. Such enfranchisements are to be made in consideration of an annual rent, or of the conveyance of

lands subject to the same uses as the lands enfranchised, or of the payment of a gross sum of money; and the person empowered to obtain enfranchisement under the act may grant the annual rent, or convey lands, or charge the lands enfranchised with a gross sum of money. The lands enfranchised are to be held of the lord of the manor in free and common socage, subject to the rents payable for such lands at the time of their enfranchisement. Where a gross sum of money is paid for the enfranchisement of lands or the release from an annual rent, it shall be paid to trustees to be appointed by two barristers of seven years' standing; and the sum itself is to be applied in paying off charges affecting the manor or the annual rent, or in the purchase of other estates to be settled to the same uses, or in the redemption of the land-tax; and in the mean time it shall be invested in government or real securities. Enfranchisements under the act are to be made by the same assurance as if the person making the same had been seised in fee at law, and such assurance shall operate by transmutation of possession. After the 31st of December, 1838, no voluntary grants shall be made of lands to be held by copy of court roll. These are the leading features of this bill; there are many details which we omit.

2. The second bill is intended to remedy some defects in the present law relating to Copyholds. According to the existing law, there must be two copyholders present to hold a customary court. By the present bill it is proposed that lords of the manors or their stewards may hold customary courts, although no copyhold tenant be present. It is next proposed that surrenders of lands held by copy of court roll shall be made by instruments in writing,

* See the names, *post*, p. 383-4.

signed by the person making the surrender, and surrenders and admissions already made of lands held by copy of court roll are forthwith to be entered on the court-rolls. Lords and their stewards are to be empowered to grant admissions out of court, and it shall not be essential to the validity of a surrender that it be presented at a court. By the present law, in most manors copyholders cannot demise their lands for more than one year without the licence of the lord. The Real Property Commissioners proposed^b that a copyholder might let his copyhold tenement for any term of years, not exceeding twenty-one years in possession, at rack-rent, without the licence of the lord; and that every such lease should be valid so far as the interest of the copyholder should extend. By the present bill every lease of lands held by copy of court roll, granted without the licence of the lord, shall be as valid as if granted with such licence; and it shall not be deemed that the person granting the lease has committed a forfeiture. In all leases granted for building purposes the fine to the lord shall not exceed twice the yearly rent reserved in such lease, and in all other cases of lands the leases of which are to be rendered valid by this act, the lord is to be entitled to the usual fines. Another object of this bill is to abolish all copyhold customs relating to curtesy, dower, and free-bench, and to render the law in these respects uniform with that of freeholds.

8. The third bill is to authorize the identifying of the boundaries of manors and lands where such boundaries are confused. "Freehold and copyhold lands are frequently intermixed. They are rarely distinguishable by the description of them in deeds and courts-rolls. When long held by the same owner, the boundaries between such of them as form part of the same inclosure are obliterated and forgotten, and it becomes necessary to make both a freehold conveyance and also a copyhold conveyance of the same land. This inconvenience from confusion of boundaries is particularly felt in the counties of Norfolk, Suffolk, and Essex."^c To remedy this evil it is proposed to enable persons to appoint referees to ascertain the identity of lands, such referees are to be barristers of ten years

standing, and their powers and duties are specified in the bill.

We have now endeavoured shortly to place before our readers the precise objects of these bills. We shall in our ensuing numbers give an analysis of them, and we invite the attention of our readers to their provisions.

NOTICES OF NEW BOOKS.

Commentaries on Colonial and Foreign Laws generally, and in their Conflict with each other, and with the Law of England. By Wm. Burge, of the Inner Temple, Esq., one of her Majesty's Counsel. In 4 vols. royal 8vo. London: Saunders & Benning, 1838.

We cordially welcome the publication of these important volumes, as well for their own excellence and usefulness, as for the credit of the legal writers of England. We had nothing whatever of late years sufficiently to compete with the admirable works of the Continental and American writers, and particularly with Mr. Justice Story's *Treatise on the Conflict of Laws*. We have no lack of first-rate treatises on every branch of our own jurisprudence, and the present work appeared to be particularly needed to perfect the library of the scientific lawyer. We also deem it particularly valuable in reference to the higher branches of legal education. In this respect it is one of the most important and valuable works published since the *Commentaries* of Sir William Blackstone. Our readers will recollect that in that celebrated work some of the passages most interesting to the student, and which relieve the dryness of the detail of our municipal law, are those which compare the leading doctrines of the Laws of England with those of the Civil Law, and with the writings of eminent Continental Jurists. These references to the agreement or the conflict of our own system of jurisprudence with that of different nations, serve both to impress and enlarge the mind of the student. Considered in this view, the work of Mr. Burge is peculiarly valuable to the higher class of readers, who are desirous of thoroughly tracing the reasons and principles of the great doctrines of civil jurisprudence;—of ascertaining the grounds on which they rest; and their application to various countries, and different states and conditions of society.

^b Third Real Property Report, p. 344, as printed for this work in the Monthly Record.

^c Third Real Property Report, p. 312.

To the practitioner of the present day, we also think these volumes are almost indispensable. As Mr. Burge truly observes, "the large interest which numerous persons resident in Great Britain hold in her colonial possessions, and the intercourse of foreign nations, so much promoted by the relations of peace, afford frequent occasions in which the Courts, both of Equity and Law in this country, adjudicate on rights to real and personal property, which are wholly derived from Foreign Laws." In short we think that no lawyer of any branch of the profession, who has a library even of moderate extent, should be without Mr. Burge's work.

In proceeding to give an outline of the contents of the several volumes, we cannot do better than avail ourselves of some of the statements of Mr. Burge in his Preface or Introductory Chapter.

"In this work," he observes, "it has been my object to bring together those several systems of Colonial and Foreign Jurisprudence which constitute a considerable part of the law administered by the supreme appellate tribunal of the British Colonial Empire, and which are frequently the subjects of judicial consideration by the other tribunals of this country. They are presented in contrast with the laws of England, and when they conflict with that law, or with each other, I have endeavoured to ascertain and state the principles on which the selection of one of these laws should be made.

In several of the dependencies of Great Britain, a system of jurisprudence prevails wholly different from the law of the parent state. In some of them it consists of peculiar local enactments combined with the law of England. In others, the law of England is entirely excluded. In some of the latter, its place is supplied by the Roman Dutch Law, in others, by the law of France, as it existed before the Code Civil, and in others by the law of Normandy. In one colony, the law of Spain is adopted, and in another colony, the Code Civil.

It is true (he adds) that a Court of Equity relieves itself from the investigation of these several systems of jurisdiction by referring it to one of its subordinate officers, to ascertain the foreign law upon which the parties rely, or which is involved in the question submitted for adjudication.

Without presuming to question the propriety of this course, it may be doubted whether it is not a consequence of the Court divesting itself of all previous consideration of the foreign law, that this reference is frequently made where it is wholly unnecessary. It may happen that the foreign law may not be that which, in a conflict between it and the domestic law, ought to govern the decision of the question, or the conflict may be between two foreign

laws. A previous knowledge of those laws might have enabled the Court in the one case, to perceive that the foreign law would not govern the decision of the case, and in the other, to select that particular law which was to govern the decision. The expence and delay of a reference, which in the one case was not required at all, and in the other was of a less restricted nature than was requisite, might have been avoided. The means by which the Court endeavours to become informed of the foreign law do not always effect that object.

The interrogatories for the examination of a Foreign Jurist, prepared by a counsel, who, however well skilled in the knowledge and practice of the English Law, may possess an imperfect acquaintance with the foreign law, will not always be adapted to elicit from the witness such answers as will supply the full information connected with the foreign law, which may eventually be requisite to enable the Court to make a correct application of it. Even if that information be obtained, its application must always be made with greater certainty and accuracy by those who have some previous acquaintance with it.

The spirit in which these observations are made, is perfectly compatible with all the respect and confidence which, as an English lawyer, I contemplate the jurisprudence of England and its administration. An acquaintance with other systems of jurisprudence can only increase that respect and confirm that confidence.

The study of foreign jurisprudence has hitherto received little encouragement from an English lawyer. The attainment of a knowledge of his own profession requires all the time which is devoted to its acquisition. Having entered on his career as an advocate, if he acquires extensive practice, the high road which he follows has too many objects of honorable ambition, before and on each side of it, to induce him to stray into the less inviting path of foreign jurisprudence.

From these and other considerations, it appeared to me, that it might be useful to the public, and acceptable to the profession, if there were furnished a more ready access to the sources from whence an acquaintance might be derived with those systems of foreign jurisprudence which are most frequently presented to the consideration of an English Tribunal."

Such being the general object of the work, we proceed now to state the several systems of jurisprudence, of which the learned author has treated. They are

1. The Civil Law.
2. The Law of Holland before the Code Civil.
3. The Law of Spain.
- 4 & 5. The Coutumes of Paris and Normandy.
6. The present Law of France.
7. The Law of Scotland.
8. The Law of England.

9. The Local Laws of the Colonies in the West Indies and North America.

10. The Laws of the United States of America.

With respect to the Law of England, Mr. Burge observes that,

It forms so considerable a part of the jurisprudence of those colonies and of the United States, that it could not be omitted without rendering the view of that jurisprudence incomplete and imperfect. Its peculiarities also serve to illustrate and render more striking the distinction between it and other systems of jurisprudence. I have also been influenced by the desire of affording foreign jurists the means of becoming acquainted with English Law, and those means may be facilitated when it is placed in contrast with the law of their own country.

The several systems of jurisprudence which have been enumerated are considered in their relation to and dealing with all those subjects, which may be classed under the heads of the *status* of persons and title to things, or property immovable and movable, by contract, by operation of law, by succession *ab intestato* and by testament.

Such is the outline of the work, and we now proceed to state somewhat in detail the contents of each volume :—

The first volume commences with a preliminary account of the several systems of jurisprudence adopted in our colonies, and of the appeal from the decision of their Courts to her Majesty in Council. It then treats of the status of persons, the rights, capacities, incapacities, and obligations which are incident to, and its effects on property. It comprises, therefore, the status of legitimacy, of husband and wife, of minors, of aliens, and slavery. The status of husband and wife necessarily includes the constitution and dissolution of marriage, and its effects on property.

The law of the domicile has so extensive an influence on the decision of the various questions, to which the status of persons and the title to moveable property give rise, that a consideration of these subjects is preceded by an examination of the various circumstances which establish a domicile.

The title to immovable and movable property by contract and operation of law, is the subject of the second and third volumes.

The second volume commences with the distinction between immovables and movables, and between those movables which are called *biens propres*, *bona avita*, and *biens acquets*, *bona acquisita*, or to adopt the analogous distinction of the English law, the title by descent and that by purchase. It then proceeds with the title to immovable property by contract. It shows the various estates and interests in which it may be created, and the effect which

these modifications may have on the ownership. The alienation of immovable property by sale, involves the consideration of the contract essential to the completion of it, as distinguished from the transfer of the *dominium*, the manner in which such transfer is made, and its registration. The other modes by which the alienation takes place, as by gift, exchange, &c., are next considered. The title by operation of law, and the acquisition of rights in immovable property, as distinguished from the ownership or *dominium*, are then considered. Under this head are classed the title by prescription, the rights of servitude, usufruct, mortgage. A similar course of examination is followed, by treating of the title to movable property by contract, and by operation of law. It comprises the contracts of sale, gift, pledge, bailment. *Quasi* contracts follow. They involve the appointment, interests, duties, and powers of guardians, curators, receivers, mandataries, &c.

The subject of the 4th volume is the title to immovable property, by succession *ab intestato* and by testament. It is commenced by a discussion on the opening of the succession, and on the presumption of death or survivorship, which some codes of jurisprudence admit, when from absence, or from the circumstances under which two persons die, proof of the death or survivorship cannot be adduced. It then proceeds to treat of the succession *ab intestato*, and of the persons whom the law calls, and the order in which it calls them to the succession, and of the several subjects which belong to these general heads.

Succession by testament follows. In treating of the power of disposing by testament, and the restriction on the exercise of that power, the right of children, and some other heirs to a certain portion of the testator's property; their *pars legitima* or *legitime* becomes a subject of consideration. The forms and solemnities essential to the validity of the testament, the rules of construction, the operation and effect given to the testament, are the subjects which then follow. The concluding part of the volume embraces those subjects which are applicable to intestate and testate succession, and regard the title of the heir, his interest in, his acceptance or renunciation of the succession, the mode in which it may be made, the *annus deliberandi*, the benefit of inventory, the separation of the ancestor's estate from that of the heir, collation, and the appointment of testamentary executors.

In a work of such magnitude as that of Mr. Burge, it is impracticable, within the limits to which we are confined, to specify the several parts which appear to be of the greatest theoretical or practical importance, and which call for the particular attention of our readers; but if we may select one from many chapters of kindred excellence, we should say that the Dissertation on Judgments in the third volume is particularly deserving of notice, and especially in

reference to the Judgments of Foreign Tribunals. This part of the law of other countries, in relation to our own, is of the greatest consequence in the administration of justice, and Mr. Burge has treated it in a full and masterly manner.

We have thus, we hope, enabled our readers to form some judgment of the professional worth of these volumes, and justified the opinion with which we set out. We can only add that comprehensive as were the plan and objects of the work, the author has with great learning and judgment fully executed his design, and in our opinion rendered an essential benefit to his profession, and an eminent service to the jurisprudence of his country.

NEW BILLS IN PARLIAMENT.

REGISTRATION OF ELECTORS.

This bill "For the Registration of Parliamentary Electors," recites the 2 Will. 4, c. 45, "to amend the Representation of the People in England and Wales;" and states that it is expedient that further provision should be made for the registration of persons entitled to vote in the election of members to serve in parliament for England and Wales; and that all provisions for the formation of such registers should be consolidated into one act: it is therefore proposed to be enacted as follows:—

That so much of the 2 W. 4, c. 45, as concerns the formation of a register of voters for any county, riding, parts or division of a county, or for any city or borough in England and Wales, or the defraying of the expenses to be incurred thereby, is hereby repealed, except as to any register heretofore made.

2. This act to be deemed part of the recited act.

3. *Counties.* Clerk of the peace to have forms of warrants, &c. printed. Clerk of the peace to issue his warrant to high constables, with forms of precepts, &c.

4. High constables to issue precepts with forms of notices, &c. to overseers.

5. Overseers to give notice annually on 20th June, requiring voters to send in their claims.

6. Overseers to prepare lists of claimants. Overseers to have power of objecting to any name either on such lists or on the part of the register of voters for the time being relating to their parish. To have power to add the word "dead" against any name in such lists or part of register. Overseers to fix copies of such lists and of the part of the register of voters relating to their own parish on churches

and chapels. To keep copies of lists for inspection and sale.

7. No payment necessary on making claim.

8. The list of claimants in any parish, and the part of the register relating to that parish, to be deemed the list of voters of such parish.

9. Any person on the register for the time being may object to any other person named in the list of voters as not entitled to be upon the list. Notice of objection to be given to the overseers. Notice of objection in all cases to be given to the party. Grounds of objection to be stated in the notice. Notice in certain cases may be sent by the post.

10. Lists of persons objected to, to be published.

11. Lists &c. to be delivered to High Constables to be forwarded to the Clerk of the peace.

12. Voters residing out of the polling district to which the parish wherein their qualification is situate belongs, may vote in another polling district on making a claim before the revising barrister.

13. *Cities and Boroughs.* Returning officer to have forms of precepts, &c. printed. To issue his precept to the overseers and to the town clerk.

14. Overseers to give public notice as to the payment of rates and taxes by occupiers of premises of the yearly value of 10*l.* on or before 20th July.

15. Overseers to have power of inspecting tax assessments, &c.

16. Overseers to prepare lists of persons (other than freemen) entitled to vote. Copies of lists to be fixed on churches and chapels. Copies of lists to be kept for inspection and for sale.

17. Persons omitted from the overseers' list to give notice of their claims. Lists of claimants to be made.

18. Town clerk to give a notice requiring freemen entitled to vote to send in their claims in certain cases.

19. Town clerks to prepare lists of freemen. Town clerks to have power of objecting to any name in the list, and to add the word "dead" against any name. List to be fixed on the town hall. Copies of lists to be kept for inspection and sale.

20. Persons named in the list may object to other persons as not being entitled to be in the list. Notices of objection to be given to the overseers, or, in case of persons on the list of freemen, to the town clerk. Grounds of objection to be stated in notice.

21. Lists of persons objected to, to be made. Such lists, and the list of claimants, to be fixed on churches and chapels. Lists of persons objected to as freemen to be made and fixed on town hall. Copies of lists and notices of objection to be kept for inspection.

22. Overseers and town clerks to deliver copies of lists to the returning officer.

23. Freemen and liverymen of the city of London.

24. Liverymen of London to poll in the Guildhall.

25. *Counties, Cities, and Boroughs.* Provision as to places having no overseers.

26. Lord Chief Justice and Judges of assize to appoint barristers for revising lists.

27. Barristers may hold separate courts.

28. Barrister to notify his appointment to returning officer, who is to transmit to him all lists.

29. Barristers to hold courts for revising lists of voters within a certain period; to give notice of the times and places of holding such courts to clerk of the peace. Clerk of the peace to give notice thereof by advertisement and to the high constables. High constables to give public notice and notice to the overseers.

30. Barrister to hold courts, and give notice thereof to the returning officer, who is to publish the same.

31. Clerk of the peace to attend the first court, and high constables and overseers to attend the courts for their respective districts and parishes.

32. Returning officer, town clerks, and overseers of the present and past year to attend the courts.

33. Powers of barrister to insert names in lists of borough voters.

34. Powers of barrister to expunge names. Mode of proceeding in cases of objection.

35. Power of revising barristers to adjourn their courts, administer oath, &c.

36. Judges to appoint additional barristers in case of need.

37. County lists to be transmitted to clerk of the peace, and to be by him copied into a book. Borough list to be delivered to the returning officer, and to be by him copied into a book. Such books to be the register of voters for one year.

38. Persons may be subpoenaed as witnesses before the courts of the revising barristers.

39. Proceedings against persons subpoenaed who shall not attend the court.

40. Power to barristers to fine high constables for neglect of duty.

41. Power to barristers to fine overseers for neglect of duty.

42. Fines, to whom payable, and to what purpose to be applied.

43. *Costs.*—That in the revision of any list of voters for any county, riding, parts or division of a county, if it shall appear to the barrister holding the court for that purpose that any claimant objected to had no reasonable and probable cause for making his claim to be inserted in such list, or if in the revision of any list of voters for any county, riding, parts or division of a county, or for any city or borough, any person objected to shall appear before the barrister holding the court for that purpose, and shall defend his title to have been inserted in any such list, and it shall appear to such barrister that he had no reasonable and probable cause for such defence, in each of the aforesaid cases the said barrister shall and he is hereby empowered to make and deliver to the party objecting an order or certificate in writing for the payment to him by the said

person so objected to of any sum of money not exceeding the sum of ten shillings for costs; and if any person objecting as hereinbefore mentioned to any other person as not having been entitled to have his name inserted in such list shall not appear, by himself or some one in his behalf, in support of such objection before the barrister holding his court for that purpose, or if it shall appear to the said barrister that the person objecting had made such objection without any reasonable and probable cause, in all such cases the said barrister shall and he is hereby empowered to make and deliver to the person so objected to an order or certificate in writing for the payment to him, by the party objecting, of any sum of money not exceeding the sum of ten shillings for costs: provided always, that the said barrister shall not in any case be empowered to order the payment of any part of any sum of money exceeding the costs actually incurred by him in support of his objection, or of his claim or title to vote, as the case may be.

44. That in case any person has been objected to, and the revising barrister shall have decided to place or retain the name of such person upon the register of voters, and the name of such person shall be again objected to, in any subsequent year, and if it shall appear to the said barrister that the person objecting had made such objection without any reasonable and probable cause, or, if it shall appear to such barrister that no change shall have taken place in the qualification of the said voter since the last decision, and that there was no reasonable cause for questioning such decision: in all such cases the said barrister shall, and he is hereby empowered to make and deliver to the persons so objected to as aforesaid, an order or certificate in writing for the payment to him by the said party objecting, of any sum of money not exceeding five pounds by way of fine, and also for the payment of any further sum not exceeding five pounds for the costs actually incurred by such person in support of his claim or title to vote.

45. Fines and costs to be recovered by distress and sale of the party's goods.

46. Copies of the registers to be printed for sale.

47. Copies of the register to be sent to overseers and town clerk.

48. Expences of clerks of the peace and high constables &c. how to be defrayed.

49. Expences of overseers, returning officers, &c. how to be defrayed.

[The following clause is proposed to be inserted in Committee.]

50. *That every barrister appointed to revise any list of voters under this act, shall be paid at the rate of five guineas for every day that he shall be so employed, over and above his travelling and other expences; and every such barrister, after the termination of his last sitting, shall lay or cause to be laid before the commissioners of her Majesty's Treasury, a statement of the number of days during which he shall have been so employed,*

and an account of the travelling and other expenses incurred by him in respect of such employment, and the commissioners shall make an order for the payment of such sum as shall thereupon appear to be due to every such barrister, and every such sum shall be paid out of the Consolidated fund.

ON THE MODE OF EXAMINING ARTICLED CLERKS.

To the Editor of the Legal Observer.

Sir,

I have been in the profession many years, with no inconsiderable practice, and yet I confess my inability, off-hand, to answer a majority of the questions propounded for examination by the Examiners.

They appear to me to be more difficult every term; and I hope the Examiners, for many of whom I entertain the greatest respect, will consider that very many of the youths seeking admission, have been articled in the country, with little means of obtaining information, and receiving little or no instruction from their masters. For my own part I do not hesitate to say that during the whole of my articles in the country, I received no instruction whatever from my master,—a gentleman of considerable practice in conveyancing; his only object seemed to be to keep me copying and ingrossing during my whole clerkship. Many articled clerks are doubtless in a similar situation, and like me, without the means of entering a conveyancer's chambers, or of accepting a situation in town without remuneration.

I feel assured that the opinion is very generally entertained, that the questions are too stringent, and I take leave to submit to the Examiners the propriety in the next and subsequent examinations, of making a selection from the questions already submitted, feeling assured that many men in actual practice would feel no inconsiderable difficulty in promptly answering the questions off-hand.

I entertain no doubt whatever but that the result of the examination will be highly beneficial to the profession and to the students. It will compel the latter, from necessity, to a course of reading which must be of the highest advantage to them in their professional career.

I lately witnessed a transaction in which a firm evinced their knowledge of legal principle in a way which not a little surprised me. An allotment of land had been sold in fee by the commissioners under an inclosure act, and yet this same firm actually prepared, and had executed by their clients, a deed of covenant to surrender it as copyhold. Whether a poor articled clerk answering a question on such a principle would have been rejected, remains to be seen.

A SOLICITOR OF THIRTY YEARS' STANDING.

[This is the first time we have heard that the Examination was considered too severe. We have understood that a few of the questions

were occasionally deemed rather difficult, but on the whole the questions have been highly approved. We have been told, indeed, that some of the young gentlemen have affected to treat the examination as an easy one, but this arises from a little self-satisfaction at their success. It is difficult to please all parties. Ed.]

Sir,

May I so far trespass upon your kindness, and presume upon the readiness you have always shewn to be of any assistance to the class of articled clerks in general, as to request your insertion of this my case, in your number of next week.

About two years before the promulgation of the new rules for examination, my parents, who, though respectable, are by no means in affluent circumstances, by very strenuous efforts endeavoured to get together a sufficient sum to have me articled to a solicitor in good practice in the country; and here, well knowing that I must depend upon my own exertions for my success in life, I paid heedful attention to what was passing around me, and was steadily walking that path which I felt would lead me to be a good country practitioner.

In the mean time the new rules were promulgated, the utility and expediency of which, in general, I most heartily subscribe to; but there is one feature in these examinations which I have always looked upon with uneasiness, nay, almost with dismay,—it is, that of so strictly requiring a knowledge of the practice of the Courts; this strictness, from all I can hear, is increasing, and the questions seem to search more deeply, at every succeeding examination, into minute points of practice. Now I take it, Mr. Editor, that it is next to impossible to attain this species of knowledge, without *sering* the practice: there are a million of points which go under the general head of "practice," which are not always to be found in the books, and if they were, would be the least likely to make an impression on the mind, because the mind is more apt to be pleased with a comprehensive view of a subject embracing principles, than to descend to minutiae, which, generally speaking, escape the memory. A man will easily give you a general idea of any country he has passed through, but ask him to describe every tree, and every stone, and every cottage in it, he will tell you it is impossible; and it is equally impossible for the law student to attain to these points of practice, without spending a year or two in London, and seeing the business of the courts. But I, alas, shall never have that opportunity; my parents have already exerted themselves to the utmost in my behalf, and I cannot expect them, nor is it in their power to maintain me for such a period in London.

Is then poverty to be the only fault for which I am to be kept without the pale of the profession? Is that bitter observation of the poet

"The rich alone have all the means of gain,"

so painfully to apply in my case, and in the cases, let me add, of very many of my fellow articulated clerks besides?

I cannot believe it. Had my parents known that these additional expenses were to be incurred,—that these additional obstacles were to be surmounted, they would have assuredly have chosen some other walk of life for their son, and would thus have been spared the mortification of seeing him disgraced, not forsooth on account of his demerits, but on account of his poverty.

“This mournful truth is every where confessed
Slow rises worth, by poverty depressed.”

At least, Mr. Editor, I will hope for myself, and those in my situation, that the examiners will not, until after the expiration of the probationary five years, insist too rigorously on this part of the examination, for it would be adding a barb to the dart of poverty, which now rankles in my soul, to see those not more sensible than myself to

—“The spur that the clear spirit doth raise,
To scorn delights, and live laborious days,”

pass within the pale, and to find myself excluded merely because the fickle goddess Fortune has not favoured me.

A COUNTRY ARTICLED CLERK.

REDUCTION OF POSTAGE.

ON the 1st instant, Mr. Freshfield presented to the House of Commons a petition signed by 233 attorneys, solicitors, and proctors, residing in London and Westminster, stating their professional interest in cheap, rapid, and punctual communication by post. The petition adverted to the inducements to evasion of the law in the present high charge of postage, and the belief of the petitioners that the extension of correspondence, and the more frequent transmission of valuable documents and papers by post, instead of being sent, as at present, in parcels by the ordinary coaches and other conveyances, would rather increase than diminish the revenue, and praying the adoption of a lower rate and a graduated scale of postage, according to the weight. The petition was referred to the Postage Committee.

According to information collected from various quarters, it appears that the attorneys and solicitors pay about 40,000*l.* a-year for the carriage of parcels, and perhaps 60,000*l.* for the postage of professional letters. If the whole of the communication on the legal business of the kingdom could be made through the Post Office, it is manifest that Government could afford to reduce the rate of charge without any injury to the revenue; and it is also

obvious that, with the increased facility and cheapness of communication throughout the empire, a very large addition would be made to the other branches of the public income.

We hope, however, that the subject will not be considered entirely as an affair of pounds, shillings, and pence. There can be no doubt that a lower rate and graduated scale of postage would be productive of great advantage to the community, independently of the diminution of the charge on each letter.

SELECTIONS FROM CORRESPONDENCE.

COMPARATIVE EXPENCE OF OFFICIAL ASSIGNEES AND SOLICITORS.

Sir,

Mr. Montagu, in his return dated 5th February, 1838, given in your journal of 24th February, 1838, states in an observation at the foot of the return:—

“There are allowances to official assignees under the new system, but which are more than compensated by the savings of the charges of accountants and solicitors under the old system;” but the accuracy of this statement is not authenticated by figures, nor any data given to establish it. I doubt its accuracy much; and I give you below the grounds for my doubt. I do not doubt that bankrupts’ estates benefit by the appointment of official assignees; but I question whether the benefit arises from the causes stated.

A fiat worked under the new system, in which the debts due by the bankrupt’s estate were in round numbers 8,000*l.*, the sum collected as due to the estate were in like manner 2,300*l.*, one half of which the official assignee had little trouble in receiving, as it was stock sold by an auctioneer, and the proceeds paid by him to the official assignee. There have been two dividends under the estate, and the costs received by the solicitor under the fiat for the striking the docket, down to the adjudication, and, inclusive of the last dividend meeting, are in round numbers 83*l.*, out of which he has paid fees on striking the docket; and to the Court in like numbers 24*l.*, leaving him a balance of 59*l.* For the same period, and under the same fiat, the official assignee has received in round numbers 97*l.*, exclusive of his charges out of pocket, which are charged separately. From this it appears, that the solicitor has received only 59*l.* from the estate, and the official assignee 97*l.*, but each has thereout to pay his clerks, office rent, &c. Now, I contend, for this charge of 97*l.*—which is nearly 4½ per cent. on the whole cash collected; and you must bear in recollection that one-half was paid in one sum—would not have been more or even so much if an official assignee had not been appointed. In fairness I ought to state that the charge of the official assignee includes remuneration for all the trouble of inspecting the bankrupt’s books, &c., and pay-

ing the debts and dividends, and generally superintending the estate.

A SOLICITOR.

CROSSING BANKERS' CHEQUES.

Sir,

I beg to call attention to a system which has obtained of late, much to the inconvenience, and in not a few cases to the actual loss of individuals: I allude to the mode adopted of crossing banker's names through checks. Now there can be no doubt but that this practice is continued with the view that the check so paid away *may pass through the banking house, and to the account of the party alone in whose favour it is drawn.* Yet how easily is this object frustrated? In how many cases, and particularly among merchants, is the object of the drawer of the check diverted? He gives his check on Drummond's to A., to be paid to his (A.'s) account at his bankers (Coutts). A. pays the check to B., who crosses out Coutts, and inserts Ladbrokes. B. pays it to C., who, if he banks at Barclay's, writes Barclay's through, and pays it in; and on the next day the check is presented and paid by Drummond's. Now it is quite clear that the check which was originally intended to be paid to A.'s account at Coutts's, is (contrary to the implied direction) paid to Barclay's. The question then arises (supposing fraud to have been concerted between, and committed by A. and B.) would not Drummonds be liable to the party drawing the check, for not having paid it as directed, namely, through Coutts's? Nothing can be more easy than for a person entrusted with a check, although crossed with some banker's name, to obtain the money for it from some friend, who may bank at a different banker's. Very well: the party entrusted obtains the money, and absconds.

Application is then made by the person himself, for payment of that which has been already paid to his clerk: the answer given to him would be, "Sir, I have given your clerk a cheque, and crossed your banker's name, and therefore my banker's book will prove the transaction, and that you have been paid." But how disappointed will he feel when he finds his check mutilated by perhaps three or four different names through it; and his original object and intention violated? It will therefore be no answer for him to say, "My bankers have paid a draft drawn by me in your favour." To whom then must he look for redress? To his bankers? They may answer, "All we have to do, is to honour your draft," and that we have done: we are not bound to enquire to whom, or for what purpose, or with what intention, it has been given. The large houses in the city would say, we have some thousands of checks pass through our hands, mutilated in the same way; and we are not bound to enquire who made the alteration. All we have to do, is to pay it to a banker whose name appears on the check.

Now my object in troubling you with these remarks, is with a view of ascertaining whether in such a case, the bankers would not be liable

to repay the check? Certain it is that they have not paid it as directed, namely, *through Coutts's*, for it has been paid to Barclay's, to the account of some individual, no more connected with the person who drew the check than the Birmingham railway is with the Brighton pier. I apprehend the object of having a banking account is as much for *safety* as convenience:—safety against fraud. And this safety against fraud is only to be accomplished by the banker strictly adhering to the directions, and the *whole* directions of his check. Of what use is it for me to write through a check, when I know that it may never pass through the house I name? This surely is a subject requiring immediate attention. The bankers and merchants should arrange this important question, "Shall we pay checks which are twice crossed through?"

A. B.

SUPERIOR COURTS.

Lord Chancellor's Court.

SOLICITOR'S LIEN.

If a solicitor, after commencing a suit for a client, refuse to proceed with it unless the client pay, or provide security for the payment of costs, he must give up all the client's papers necessary for carrying on the suit, discharged from any lien for his costs incurred.

This was an appeal motion to discharge an order of the Vice Chancellor, directing the plaintiff's solicitor, who refused to proceed with the suit unless the costs incurred were first paid, to deliver up the client's papers to his new solicitor, upon the latter's undertaking to restore them, when no longer required for the suit. [The case is reported *ante*, p. 107.]

Mr. Jacob, and Mr. Addis, in support of the motion, stated the facts, and cited some of the cases which were referred to in the Court below. Their client's bill of costs was still unpaid. He was ready to give ready access to the papers when required, and to produce them in Court, or any place else, but he ought not to be called on to part with his lien, which would be gone if he gave the papers out of his possession.

The Lord Chancellor, without hearing the counsel for the plaintiff, said that under the circumstances he did not conceive that the solicitor had any lien on the papers. He feared it was no uncommon practice, especially with country attorneys, to encourage persons to go to law, and when some progress was made in the causes, and the clients run dry, then to stop short, and refuse to proceed in the suits until the client's friends paid, or found security for the costs. It should be well understood that that was a practice which was most dangerous to the poorer suitors, and which this Court would not countenance. If a solicitor commence the client's suit, he could not be allowed at his own pleasure to abandon it, and discharge the client, and still retain his

papers from him. If the client discharged his solicitor, the latter had a right to retain the client's papers in his possession until paid, or secured in his costs. *Twort v. Dayrell*.^a At law the client could not change his attorney without an order of the Court or Judge. Lord Eldon held that a solicitor declining to proceed for his client, had no *lien* for his costs on a fund in Court. *Cresswell v. Byron*.^b The applicant in the present case having refused to go on with the cause, must give up the papers to one who will, discharged from all *lien*. The motion is dismissed with costs.

Mr. Jacob.—The client has offered, by his present solicitor, to take the papers, subject to the *lien* of the former solicitor for his costs, undertaking to return them when done.

The Lord Chancellor.—He may give him an undertaking if he choose, but there is no *lien*. *Heslop v. Metcalf*, *Sittings at Lincoln's Inn*, December 22d, 1837.^c

SOLICITOR.—PRIVILEGED COMMUNICATION.

A solicitor who was made defendant to a bill together with his clients, refused to answer interrogatories relating to communications made in his presence to his clients by a third person on the ground of privilege. Held, that the solicitor was bound to answer so much as would enable the Court to judge whether the communications were entitled to privilege.

This case is reported p. 156, *ante*. The bill was filed by the Atlas Insurance Company against the Eagle Insurance Company to set aside a policy of insurance effected by the latter with the former office. Mr. Beetham, solicitor to the Eagle office, was made defendant, but had no interest in the suit. The bill charged concealment and misrepresentation against the defendants, and several interrogatories followed, founded on that charge, and applicable to communications both written and oral between the officers of both offices in the presence of Mr. Beetham. He refused to answer these interrogatories, on the ground that as he was present at the office of his clients as their legal adviser when these communications were made he was privileged from disclosing them. The answer was excepted to; and the Master, on reference to him, reported the answer insufficient. Mr. Beetham excepted to the report, and the Master of the Rolls allowed his exception.

The plaintiffs appealed from his Honour's order. Mr. Wigram and Mr. J. Russell in support of the appeal. The interrogatories applied to a conversation between the officers of the two companies in the office of the Eagle Insurance Company, when Mr. Beetham was present by accident. He was asked whether a certain paper was not handed by the actuary of the Atlas to the actuary of the Eagle? The

actuaries were not the clients of Mr. Beetham, and he was not asked to disclose any thing that came to his knowledge in his professional capacity, to which the privilege claimed was restricted.

Mr. Wakefield and Mr. Hislop Clarke, for the defendants, supported the decision of the Rolls.

In addition to the cases referred to in the former report, the late cases of *Wheatley v. Williams*,^a and *Turquand v. Knight*,^b in the Court of Exchequer.

The Lord Chancellor, after looking to the interrogatories and the answer, said the latter was involved and obscure, so that the Court could not judge whether the communication was such as was entitled to privilege or not. The bill stated that there was a meeting of the officers of the two companies, at which Mr. Beetham was present. He was asked whether he did not see a paper—which was a letter from Dr. Travers—relating to the life proposed to be insured, given by Mr. Downes of the Atlas to the actuary of the Eagle. That being a question of fact, was not within the rule of privileged communication, and the defendant was bound to answer more fully, and to satisfy the Court that the communication was confidential to him as solicitor.

Desborough v. Rawlins.—*Sittings at Lincoln's Inn*, February 9th and 10th, 1838.

Rolls.

PRACTICE.—SOLICITOR'S RETAINER.

A solicitor is bound to have an undoubted authority from a client, before he appears for him in a cause, although it is not necessary that the authority should be in writing.

This was a motion for an order to take an answer off the file for irregularity. It appeared that the bill was filed by the creditors of one Peppin, deceased, against William Clarke, and Lydia Spriggs, his sister. The executors of the deceased William Clarke, who died since the filing of the bill, had given a verbal authority to Messrs. Douglas and Abbey, country solicitors, to be concerned for the defence, but Lydia Spriggs never gave them any authority. They, however, entered the appearance, and filed the answer for both. After Clarke's death, Lydia Spriggs gave Mr. Shuttleworth, another country solicitor, a written authority to act for her in defending this suit.

Mr. Pemberton moved, on these grounds, that the answer, and the appearance also, be taken off the file.

Mr. Bethel, for Messrs. Douglas and Abbey, contended that the act of one executor was binding upon the other; and that Clarke, in his lifetime, alone acted in the matter of the executorship, his sister not then interfering.

Mr. Kindersley, for the plaintiffs in the suit, said that Lydia Spriggs was not damaged by what was done, and that the answer was merely a formal answer.

^a 13 Ves. 195.

^b 14 Ves. 271.

^c This case was referred to in the article on Solicitor's Liens, p. 262. The report, by mistake, was not then inserted. *En.*

^a 1 Mee. & W. 533.

^b 2 Mee. & W. 98.

Mr. Pemberton, in reply, denied that the answer was merely formal, for the executors of the deceased had the duty imposed upon them of rigorously examining the claims made by the creditors on the estate.

Lord Langdale.—Solicitors had no right to enter an appearance, or file an answer for any person whatever, without authority. Clarke, one of the executors, employed Messrs. Douglas and Abbey, but it did not appear that Lydia Spriggs, the executrix, in any manner employed them, or had any communication with them, yet they appeared, and filed an answer for both. A considerable time after this, Lydia Spriggs, and also Clarke, gave a written authority to another solicitor to attend to their interest in the same cause. Notwithstanding this, Douglas and Abbey, acting on the supposed authority which they received from Clarke, not only proceeded to enter an appearance for him, but appeared for Lydia Spriggs, and filed a joint and several answer for both. It had been decided more than once that it was not necessary that an authority given to a solicitor to sue or to defend, should be in writing. It was, however, the duty of a solicitor to take care to have sufficient evidence of the authority given to him, in case that authority should afterwards be challenged. If he neglect taking it in writing, and have not other evidence, he will be treated as if he had no authority at all. Douglas and Abbey, in consequence of not having used due precaution, had filed an answer without any apparent authority. Nothing could be more perilous than to give way to a practice of this sort. He had no doubt on the merits of the application, but he should consider the terms of the order with reference to the interests of the parties.

— v. *Clarke*, sittings at the Rolls, December 19th, 1837.

Queen's Bench.

[Before the Four Judges.]

QUO WARRANTO.

To support a rule for a quo warranto, the party applying to the Court for the writ must shew that he has sufficient interest to be a relator ; and the facts sworn to by him, must be sworn to be true within his own knowledge. An affidavit stating facts on the information of a third person, is not sufficient.

In this case a rule for a *quo warranto* had been obtained, calling on the defendant to shew cause by what authority he claimed to exercise one of the corporate offices of the borough of Southampton.

Sir W. Follett, who appeared to shew cause against the rule, took two preliminary objections. The facts stated on the affidavit on which that rule has been obtained, are stated on the information and belief of the deponent. Not one of them is vouched for by him, as being true within his own knowledge. This Court cannot grant a *quo warranto* upon hearsay statements alone. There is another ob-

jection. The deponent is described as of Southampton, but it does not appear that he has sufficient interest in the election to be a relator.

This Court, finding that this representation of the facts was well founded, at once declared the objections fatal to the rule ; but upon consideration of the other circumstances in the case, would not grant costs.

Rule discharged, but without costs. — *The Queen v. Toomer*, H. T. 1838.—Q. B. F. J.

Queen's Bench Nisi Prius.

[Before Lord Denman and a Special Jury.]

ANNOYANCE JURY.—FINE.

To justify a constable in levying a fine imposed by an annoyance jury on a shopkeeper, for having defective scales, the constable must shew that in fact all the jury saw the scales examined. But where he justifies under a local act of parliament, and under a warrant from a proper officer appointed under the act, he need not shew that at least twelve of the jury concurred in the finding.

A liability to serve on the annoyance jury of the city of Westminster, will not disqualify a man from serving on a jury in one of the Superior Courts there, in a cause where the validity of the decision of an annoyance jury of that city is the matter to be tried.

Trespass for breaking the plaintiff's house, and taking his goods. Plea, Not Guilty. The first defendant was an officer of the high bailiff of Westminster ; and the other was a broker. The defence was, that under the Westminster Annoyance Jury Act, 29 G. 2, c. 25, entitled "An Act for appointing a sufficient number of Constables for the City and Liberty of Westminster, and to compel proper persons to take upon themselves the office of Jurymen, to prevent nuisances and other offences within the said City and Liberty," a jury had been summoned,—that by that jury the plaintiff had been fined, and that the defendants, under a warrant issued upon the verdict of the jury, had levied the goods. The fact of the summoning of the jurymen, and of their being sworn, and going round in the usual manner, was proved. It was also proved that some of them entered the plaintiff's shop, while others stayed at the door ; that the plaintiff's scales were examined, and one of them condemned, and he was fined.

Mr. Erle, (with whom was Mr. C. Jones), for the plaintiff, contended, that to make out the justification, the defendant ought to shew that all the jurymen concurred in condemning the scales, and levying the fine. The act—

Lord Denman.—If, in fact, they were all together, and saw the scales examined, I do not think that these defendants are, under this state of the pleading, required to prove that all the jurymen agreed in the verdict. But undoubtedly all the twelve ought to be together, so as to be capable of seeing the scales examined. They are not entitled to receive

statements of the examination from each other.

As none of the jurymen examined could swear that all the jurymen were at the time of the examination in the plaintiff's shop, or at his window, seeing that examination made, the plaintiff had a verdict.

This cause had been marked as a special jury cause. When it was called on for trial, only seven special jurymen attended. A tales was prayed.

Mr. Erle, for the plaintiff, objected that the panel of talesmen consisted almost entirely of persons liable to serve on the Annoyance Jury of the city of Westminster, and contended that that circumstance disqualified them from sitting as talesmen in this cause.

Lord Denman.—A liability to serve on the annoyance jury does not make them incompetent to serve on the jury in this cause.

Holland v. Heath and Griffiths, H. T. 1838. Q. B. N. P.

Queen's Bench Practice Court.

DECLARATION.—VARIANCE.—WAIVER.

When there is a variance between the declaration and the process, it is an irregularity which should be taken advantage of by the defendant, if in vacation, by application to a Judge at Chambers, and where such an application is refused, the Court will interfere in Term, although the defendant shall have pleaded, the plea being under protest.

James had obtained a rule, calling on the plaintiff to shew cause why his declaration should not be set aside on the ground of irregularity, against which,

Peacock shewed cause.—The irregularity complained of was, that the defendant was alleged to have been summoned, whereas he was arrested on a writ of *capias*. The declaration, it appeared, had been delivered on the 10th August, and the time for pleading did not expire until the 1st November, under the 12 R. G. M. T. 3 W. 4. On the 2d of that month, before the judgment office was opened, a plea was delivered under a protest. It was submitted, however, that notwithstanding this protest, the defendant had been guilty of *laches*, in not applying by summons before, and that he was too late to come to the Court. He should have applied at once in vacation, and was wrong in waiting until term had commenced. *Cox v. Tatlock*, 2 D. P. C. 47, was a case, which decided that an irregularity in any proceeding had in vacation, when there was time to apply to a Judge at Chambers before Term, must be taken advantage of in vacation, and the party could not wait until the first four days of Term, although there should have been no intermediate step taken. Supposing the plea to have been delivered immediately after the end of Trinity Term, the defendant could not apply until Michaelmas Term to take advantage of his protest, if the course adopted in the present instance was correct, and in the mean time the plaintiff

might have proceeded to trial, and possibly might have obtained judgment and execution. In *Anderdon v. Alexander*, 2 D. P. C. 267, it was held too late to apply to set aside proceedings in outlawry for irregularity, in Michaelmas Term, the last of the proclamations having been in August, the *onus* lying on the defendant to shew that he was ignorant of the proceedings. *Hinton v. Stevens*, 4 D. P. C. 283, was also in point.

James, *contra*, submitted that the plea having been delivered under protest, there was no waiver, for the protest must be considered as reserving to the party the right to avail himself of the irregularity; and therefore it was quite different from those cases where the Court had considered the act of the defendant as a waiver. The defendant here was forced to go on, and the distinction which had been drawn by the Court was, that if an act was spontaneously done, it was a waiver; but if not, and the party was forced to proceed, the contrary was the case. Besides his affidavit shewed that an application made to Gurney, B., in vacation, to set aside the bail bond, on the ground of the irregularity in the declaration, was refused, and the present rule was therefore obtained, by way of appeal, from the decision of the learned Baron. The defendant had been guilty of no *laches*, and the rule must be absolute.

Cur. adv. vult.

Littleale, J., on giving judgment, said that he had no doubt that the declaration was irregular, but the question was whether the defendant had not been guilty of a *laches* in not taking advantage of it in proper time. The application made to Mr. Baron Gurney was that the bail bond should be delivered up to be cancelled, and not to set aside the declaration, and the application was dismissed; but if that dismissal had been followed up by an application by the defendant to set aside the declaration, and that also had been refused, the defendant would have been in time to come to the Court notwithstanding the subsequent proceedings, the plea being delivered under protest. The application in this case, which had been made at chambers, however, was by the bail, and that had nothing whatever to do with this application. The defendant, not having acted in accordance with the suggestion he had now thrown out, in applying to set aside the declaration, the present application was too late, and the rule must be discharged.

Rule discharged.—*Tory v. Stevens*, M. T. 1837. K. B. P. C.

Common Pleas.

COSTS UNDER 43 GEO. 3, c. 46.

Where, on an application for costs under the 43 Geo. 3, c. 46, s. 3, on the ground of an excessive arrest, without reasonable and probable cause, it appears that the sum for which the defendant was arrested, consisted of two amounts, one of which was recovered,

while the other was abandoned at the trial, the defendant having pleaded to it the Statute of Limitations, and it is shown by the plaintiff's affidavit that the defendant frequently in conversation admitted the latter sum to be due, the Court will not grant the defendant his costs.

Wilde, Serjt. shewed cause against a rule obtained by *Petersdorff* for allowing the defendant his costs under the 3d section of the 43 G. 3, c. 46, on the ground of an excessive arrest. The rule had been obtained on an affidavit made by the defendant's attorney, and he swore that the defendant was arrested for a sum of 28*l.* 9*s.*, and that he gave bail, after which on the 24th October, the plaintiff delivered a declaration containing a count on a bill of exchange, a count for goods sold and delivered, and a count on an account stated. By his particulars he claimed 17*l.* 9*s.* on the bill, and 11*l.* for goods sold, but deponent having been informed by the defendant, that he had had no dealings with the plaintiff by way of trade for more than six years, and that the sum mentioned in the particulars was not due, pleaded to the declaration as to the first count, no notice of dishonour, and as to the second and third counts, the statute of Limitations. At the trial the jury found a verdict for the plaintiff on the first count, but the second and third counts were abandoned. The affidavit concluded by alleging that the defendant had incurred considerable expense on the second and third counts, and that no goods had been sold and delivered to him in accordance with the particulars of demand. It was pointed out that no affidavit was made by the defendant himself, within whose knowledge the real facts of the case were, but that the attorney was put forward to swear only those circumstances which the defendant might choose to communicate to him, and by these means he was made to traverse the state of the particulars. It was the duty of the defendant to make out the want of reasonable and probable cause for the arrest, but an affidavit which was sworn by the plaintiff was now produced, in which it was stated that the deponent had frequently called upon the defendant for payment of the 11*l.* due for goods sold, and he never denied that he owed it, but always promised to pay soon. The residence of the defendant was only ascertained about six months ago by the plaintiff following him home. It was submitted that it was not the duty of the plaintiff, before bringing the action, to look round and consider every unjust or dishonest defence which the defendant might set up, but that he had very good grounds for proceeding for the 11*l.*, as well as the 17*l.* 9*s.*, the defendant having so frequently admitted it to be due, and promised to pay it. An action for a malicious arrest could not be brought by the defendant under such circumstances, and the present application could not prevail. *Spooner v. Danks*, 7 Bing. 772, was a striking case in point, and it was clear from it that the proof was on the defendant. If there had been any thing which

amounted to an absolute legal, as well as a moral bar to the action in the present case, it would have been different; but the defendant ought not to be permitted to take advantage of his own act.

Petersdorff, in support of the rule, urged that the facts brought forward by the defendant were sufficient to shew the want of any reasonable or probable cause for the arrest for the full amount of 28*l.* The defendant in the answer which he set up to the claim for 11*l.*, was acting legally and properly under the provisions of an act of parliament, and he could not be said to have acted in a dishonest or an unjust manner. The plaintiff had no right to arrest him on admissions of his own, which he knew could not be received in evidence of the debt, and this having been done, the defendant was entitled to relief under the act. *Griffiths v. Pointon*, 2 Nev. & M. 675, was a case directly in support of this proposition. The marginal note was, "A party is not warranted in arresting another for a debt of which he has not at the time of making the arrest some evidence, besides his own personal knowledge of its existence; and therefore a plaintiff arresting a defendant for a large sum of money, and having at the time of the arrest only evidence as to a small portion of the amount, was held to be liable to costs under the 43 Geo. 3, c. 46, s. 3, although at the time of the trial some evidence of a subsequent acknowledgment by the defendant was given."

Tindal, C. J.—The plaintiff in this case need not have known that it was the defendant's intention to set up the defence which he did, and he might have had abundant evidence of the actual delivery of the goods.

Petersdorff.—If that suggestion were allowed to influence the Court in a case of this description, the statute would in fact become void. The judgment in the case cited declared that attorneys should caution their clients how they brought actions which they could not support by proper legal evidence. The case of *Bullantine v. Turner*, 1 Nev. & P. 219, however, seemed precisely to meet the suggestion of the Lord Chief Justice, for there infancy, a defence similar in its effect and nature to that of the Statute of Limitations, was set up, and yet the Court held the act to apply.

Tindal, C. J.—Infancy is very often a true and honest defence; but here the defendant is met four several times by the plaintiff, and on each occasion he promises to pay.

Petersdorff.—If the defence was a legal one it was enough; and the Court in the case cited said, that it had always been held that the damages recovered by the plaintiff were *prima facie* evidence of the sum due from the defendant, and that the conduct of the defendant certainly could not be approved of; but it is well that the parties should know, when a debt amounts just to 20*l.*, the risk they run in making an arrest. The cases of *Ashton v. Muill*, 2 D. P. C. 727, and *Nicholas v. Hayter*, 4 N. & M. 882, and 2 Ad. & El. 348, were equally strong. The mere statement of the plaintiff, besides, could not be adopted in lieu

of legal evidence. The question was, whether he had any reason to believe that he could sustain his action when it came into Court, and the facts proved on his own affidavit shewed that he must have been fully aware of his inability to give legal proof of the admissions which he now alleged the defendant had made.

Tindal, C. J.—I think the defendant has not brought himself within the operation of the statute. It is clear from the enactment that it lies on the defendant to shew that the plaintiff had not reasonable and probable cause for holding the party to bail for the amount mentioned in the affidavit, and from the language of the act it would be absurd to suppose that the plaintiff ought to shew that he had good grounds for the arrest. In this case the defence, which decreases the amount due, is the plea of the Statute of Limitations. Now I think it is unnecessary here to lay down any general rule; but the ground on which we come to our decision is, that the defendant has by his own conduct decoyed and lulled the plaintiff into a belief that he did not intend to take advantage of the statute. But I will not stop to inquire into the morality of the defence; but when in the plaintiff's affidavit we find it sworn that the defendant often promised to pay, who could suppose that he would plead the Statute of Limitations in bar to the action? I am aware that the late statute requiring admissions to be in writing takes away the power of the plaintiff to give the conversations in evidence; but the question is, whether he had a reasonable idea and belief that he was entitled to proceed? The case is distinguishable from that of *Griffiths v. Pointon*; for there the only evidence of the plaintiff's claim was his own personal knowledge of its existence, and he was quite sure that he would never be able to give that in evidence, and therefore there was then no reasonable or probable cause. The case of *Balantine v. Taylor* stood on its own peculiar circumstances; but the opinion of the Court seems rather to admit the principle on which we are deciding this case. It is not necessary to lay down any rules, but we may say, that when the debt appears to be really due,—asserted by the plaintiff and not denied by the defendant,—and when the cause of holding the defendant to bail may be said to depend on the conduct of the defendant, the case, it appears to me, does not come within the meaning of the statute. I am of opinion, therefore, that this rule must be discharged.

Park, J., concurred.

Vaughan, J.—I am of the same opinion, and I think that we should not duly administer justice if we were to carry the construction of this act to the principle contended for on the part of the defendant. The case appears to me to rest on its own circumstances; and, as I observed, that according to the provisions of the act, the motion for costs must be made in open Court, and that it is to be decided on affidavit; and it appears that it was the object of the legislature to give the Court the opportunity of judging of all the facts, and it is for

the defendant peculiarly to shew all the circumstances necessary to make out the want of reasonable and probable cause. Now, in the present case, the affidavits of the plaintiff shew that he had good reason for believing that his demand upon the defendant was a good one, for the defendant's conduct lulled him into a belief that the Statute of Limitations would not be pleaded. It is different from a case of a release, because that would be an extinguishment of the debt, but here the debt is not barred, although the evidence which would prevent its being so is inadmissible by reason of its not being in writing. We should be doing injury to the parties if we were to make this rule absolute.

Bosanquet, J.—I am of the same opinion. The defendant, who seeks to recover costs under the statute, has to bind the Court, by shewing that there is a want of reasonable and probable cause for the arrest, to grant his application, and the act provides that this shall be decided on affidavit. It has been justly complained of that in this case the defendant has made no affidavit himself, and it is unjustly complained of that the plaintiff has made an affidavit, because he was at liberty so to do by the provisions of the act. Then it appears that the defendant had frequently promised to pay the debt, and when the plaintiff therefore knew that it was due, and heard the defendant admit also that it was due, he might well suppose that the defendant would not set up the defence which he did. This case must stand on its own ground, and therefore, without laying down any general rule, I think the defendant has not brought himself within the operation of this act.

Rule discharged.—*White v. Prichett*, H. T. 1838. C. P.

Exchequer of Pleas.

TIME TO PLEAD.—HOW CALCULATED.

Where a month's time to plead has been obtained by the defendant on the 5th September, it does not begin to run until after the 24th October, although the order imposes on the defendant, the term of taking short notice of trial for the first sittings in Term.

James had obtained a rule nisi for setting aside an interlocutory judgment signed in this cause on the ground of irregularity, against which,

R. V. Richards shewed cause. On the 5th September, it appeared, the time for pleading having expired, the defendant obtained an order from *Williams J.*, for a month's further time, taking short notice of trial, if necessary, for the first sittings in Term; and on the 31st October it was signed for want of a plea. It was now contended that the judgment was regular, for if the time for pleading did not begin to run until after the 24th October, the cause could not have been tried on the first sittings in Term.

Lord Alinger, C. B., was of opinion, that the case was decided by *Trinder v. Smedley*,

3 D. P. C. 87. If the defendant was not bound to plead until after the 24th October, the plaintiff could not, it was true, try at the first sittings in term, but the meaning of the order of the learned Judge was, that the defendant should take short notice at all events. The time for pleading, therefore must be considered as not having begun to run until the 24th October, and the rule must be absolute, but without costs.

Parke, B., thought that the time from the 10th August to the 24th October must be exclusive.

Alderson, B., concurred.

Rule absolute, without costs.—*Le Fevere v. Molineux*, M. T. 1837. *Excheq.*

JUDGMENT AS IN CASE OF A NONSUIT.

In a country cause, issue having been joined in Easter Term, it is too soon to move in the following Michaelmas Term for judgment as in case of a nonsuit.

Wightman had obtained a rule for judgment as in case of a nonsuit, against which

Buyley shewed cause. It was a country cause, and issue was joined in Easter Term, but no notice of trial was given. *Gough v. White*, 2 M. & W. was cited; and it was contended that the application was too early.

Wightman, *contra*, referred to *Robinson v. Taylor*, 5 D. P. C. 518, where it was held that a motion for judgment as in case of a nonsuit might be made in M. T. where issue was joined in a country cause, in Easter Vacation, and no notice of trial was given.

Lord Abinger, C. B., said that the practice was, that in a town cause, a party was entitled to have two opportunities of going to trial before the defendant could move for judgment as in case of a nonsuit; and upon the same principle, the plaintiff in a country cause must have two assizes in which to try his cause.

The present motion should not have been made until after the second assize had passed.

Parke, B. concurred.

Alderson, B., said that it had already been decided that in a cause to be tried before the sheriff two terms must pass before a motion for judgment as in case of a nonsuit could be made: and it was extremely desirable to have one practice for all the Courts.

Rule discharged with costs.—*Smith v. Miller*, H. T. 1838. *Excheq.*

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

For Exchanging Lands in Common Fields.

Lord Ellenborough.

[This bill is in Committee.]

For the better Regulation of Watermen and Steam Boats on the Thames.

[This bill has passed.]

To remove doubts as to the validity of oaths, and to substitute affirmations.

Lord Denman.

[This bill waits for second reading.]

To regulate the Payment of Rates of Parliamentary Electors, and the Admission Duty of Freemen.

[This bill has been negatived.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the improvement of County Courts of Civil and Criminal Jurisdiction.

Lord John Russell.

[Leave has been given to bring in this bill.]

To provide for the access of Parents, living apart from each other, to Children of tender age.

Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[This bill stands for second reading on 11th April.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.

Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts.

Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

To provide for international Copyright.

Mr. P. Thomson.

To regulate the office of Sheriff, and diminish the expenses.

Col. Davies.

LAWS OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

[These three bills are referred to a Select Committee. The following are the Members appointed:—Sir R. Peel, Mr.

Goulburn, Sir E. Knatchbull, Sir J. Graham, Sir W. Follett, Mr. Yorke, Mr. Darby, Mr. Freshfield, Mr. James Stewart (Honiton), Mr. Hayter, Mr. Lynch, Mr. Duckworth, Mr. Strutt, Mr. Aglionby, Mr. Shaw Lefevre, Mr. A. Sanford, Mr. W. J. Blake, Lord Viscount Eastnor, Mr. W. Miles, Mr. Wrightson, Sir J. Campbell. Power to send for persons, papers, and records, and five to be a quorum.

To amend the Law of Easement.

To abolish Customs affecting Lands in certain cases. The Attorney General.

[These two bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagees in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To amend the 6 & 7 W. 4, for facilitating the Inclosure of Open and Arable Fields in England and Wales.

Lord Worsley.

[This bill stands for second reading.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

For the further Relief of Quakers, Moravians, and Separatists. The Solicitor General.

[This bill stands for third reading.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

LAW OF PARLIAMENTARY ELECTIONS.

To prevent threats to voters, or attempts at intimidation.

Mr. Slaney.

[This bill stands for second reading.]

To amend the 2 W. 4, intitled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

To amend the law for the trial of Controverted

Elections for Returns of Members to serve in Parliament. Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill stands for second reading.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

[In Committee.]

Mr. Warburton.

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

[For second reading.] Mr. Hume.

THE EDITOR'S LETTER BOX.

There appeared to be some doubt amongst practitioners on the New Rule of Hilary Term last, relating to *Special Juries*, (see p. 265, *ante*.) whether it was or not confined to cases of Replevin; but on looking at the Rule, it appears evident that it relates to *Special Juries* applied for by *defendants* in all cases, and to *Special Juries* applied for by *plaintiffs* in *replevin*. It of course does not relate to other plaintiffs. We understand that the Masters hold this to be the true construction of the Rule.

The Reviews of some new publications are unavoidably postponed; particularly the work of Mr. Leigh on the Law of Nisi Prius.

"A Subscriber" inquires "How long a person may remain after being admitted an attorney, before he need take out a certificate, provided he is in the meantime in an attorney's office, not to render it necessary for re-admission?" The decisions on this subject are collected in *The Legal Observer*, vol. 13, p. 259.

It is very natural that those who have entered into a controversy in these pages should wish to have the last word; but, where the arguments on both sides have been sufficiently stated, it is needless to reiterate them. The readers of the whole correspondence will judge for themselves.

The suggestions of a Correspondent, relating to Questions on the Law of Wills, will probably appear next week.

The letter of W. R. B. is under consideration.

Some letters intended for the present number have been deferred for want of room.

The Legal Observer.

SATURDAY, MARCH 24, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PROGRESS OF LAW REFORM.

THE present Session of Parliament promises to be a very important one in a legal point of view. We have already before us many bills for effecting great changes in the law, and we do not think that we have seen the end of the list. We shall therefore, according to our usual practice, shortly notice the state in which these measures remain, and the apparent chance they have of passing.

Lord John Russell's bill, relating to the Quarter Sessions, will be printed before, but will not be proceeded with until after Easter. As yet it has met with no direct opposition, but mutterings of dissent have occasionally been heard. The appointment of the Barristers by the Crown is objected to by some, on the ground, we presume, of throwing too much patronage in the hands of the Minister of the day, and we certainly think there is reason in this objection. Another difficulty which has arisen is the salary and station of the Judges. In answer to a question, Lord John Russell said that it was his intention to give them a salary from £400 to £1000 a-year. This must mean that they are to remain in practice at the bar, as it would be impossible to persuade any number of persons competent to fill the office, to abandon their incomes and expectations for the sum proposed to be given them. We await this bill with much interest.

The next bills are the Copyhold Bills, to which we alluded last week, and an analysis of one of which—the bill to facilitate Enfranchisements—is printed in our present number. We understand that the question of compulsory enfranchisement has been considered by the Select Committee to

which the bills have been referred; and that they have come to resolutions favourable to this mode after a certain period. This question particularly refers to the first bill, and is of much importance to the profession. We have already declared ourselves in favour of a compulsory enfranchisement; and we sincerely hope that the bill, as altered by the Committee, will pass into a law.*

The Attorney General has also introduced a bill for regulating the Registration of Voters.^b In this bill he has omitted the clauses formerly introduced for superseding the present system of revising votes, and establishing a permanent number of Revising Judges, who should devote themselves exclusively to this duty. We much regret this; we have repeatedly expressed our opinion against the existing system, and we are sorry that the Attorney General has not adhered to his original proposition. We believe, however, that the bill will pass in its present shape with but little opposition.

A bill for amending the law relating to Coroners was, we are sorry to say, summarily disposed of on Tuesday. We doubt much whether it would be advisable to vest the appointment of Coroners in the Quarter Sessions as was proposed, but we should have been glad to have had the bill introduced, if it were for no other object than to better remunerate this very badly paid officer for the discharge of his duties. We hope that a bill may be still introduced having this object.

The Bill for the better observance of the Sunday was passed on the second reading by a majority of two to one; and, although it may admit of judicious alteration in Committee, will, we think, in substance be carried in its present form.

* See *post*, p. 336. ^b See *ante*, p. 373.

COMPULSORY ENFRANCHISEMENT
OF COPYHOLDS.

THE Copyhold Bills, to which we adverted last week, involve two principles: the first, a voluntary power of enfranchising; and secondly, a compulsory power. The voluntary mode is provided for by the first bill of the set;^a the compulsory power may be given by way of addition to that bill; but is not yet introduced into it. It may be doubted whether there should be a general enfranchisement by commission or otherwise, which should abolish the copyhold tenure throughout the country. If both lord and tenant chuse to abide by this tenure, although we would willingly, for the sake of obtaining uniformity in the law, abolish it, yet we are ready to proceed by degrees, at any rate at first. But we confess that, in certain cases, we would allow a compulsory power. There would, we think, be a manifest injustice to give this power to the lord—it would be adding to his power, already sufficiently large; but where a tenant will make the lord a proper compensation for his rights, we would allow him to compel the lord to grant an enfranchisement. The effect of the present tenure is greatly to check the beneficial enjoyment of land. The timber on the land cannot be usefully enjoyed either by lord or tenant, and their interests clash. The timber unquestionably injures the land, so far as the tenant is concerned. It is his interest to allow it to decay. The consequence is, that on copyhold land timber is rarely seen; and we find that in Sussex and other parts of England the boundaries of copyholds may be traced by the entire absence of trees on one side of a line, and the luxuriant growth on the other.

As to mines, neither lord nor tenant can work them. The tenant has no power beneath the soil,—the lord cannot enter upon the lands without being liable to an action of trespass or on the case.

Then, again, where the fine is arbitrary, and payable on the improved value of the land, it tends directly to check the laying out of capital either in building, agriculture, or any other improvement.

This being the state of the case, we are very desirous of giving the tenant a power to lay out his capital on his lands with safety and advantage, providing a proper indemnity for the claims of the lord.

^a See *post*, p. 388.

ON THE COPYHOLD BILLS.

To the Editor of the Legal Observer.

Sir,

THE bill which the Attorney General has brought in this session for facilitating the Enfranchisement of Copyholds, is nearly the same as the one which he introduced three years ago. In some observations which I then addressed to you, I pointed out an objection to the bill, which, with your permission, I will repeat, because it seems to me of great importance.

By the 2d and 3d sections tenants for life are empowered to enfranchise or obtain enfranchisement without the consent of the remainder-men, or of any persons to protect their interest. This is surely a very objectionable power. It frequently happens that a tenant for life takes little interest in the property, and he may be induced by a variety of selfish motives, or by the misrepresentations of his agent, to agree to partial enfranchisements for money or land, which will much diminish the value of the estate; and even in cases where the actual loss to the remainder-man may be inconsiderable, the exercise of the power will be regarded with suspicion, and be a continual source of disagreement. It is a mistake to suppose that the interests of both are the same, for the lord of a manor, who is only tenant for life, will, of course, wish to secure the fine on the copyholder's admission before he enfranchises, and the copyholder, after having paid his fine, will not be disposed to purchase the enfranchisement, except on terms which would be injurious to the remainder-man of the manor. The copyholder for life might also injure his successor by consenting to the imposition of a large yearly sum, or the surrender of a valuable piece of land, in order to avoid paying a fine on his admission.

The bill, as now brought in, contains very full powers for raising the price of enfranchisement and for apportioning the charge; but no provision is made for the case of a tenant for life with remainder to others in *parcels*. As the bill stands, the remainder-man of part might be charged with the cost of enfranchising the whole.

The expense of a deed for every enfranchisement, and of investing the purchase money according to the provisions of the bill, will be a great obstacle to the successful operation of the measure; and I would therefore suggest a clause empowering the lord to effect an enfranchisement by a mere presentment on his court rolls, instead of a stamped instrument.

The bill brought in at the same time for amending the Law relating to Copyholds, will remove many of the inconveniences of the present mode of conveying copyhold property; but it is certainly an invasion of the lord's rights. As the bill is now prepared, tenants

may part with their estates without any communication to the lord or steward, unless for their own security. This power might be very frequently used to evade the payment of a fine, but supposing the fine secured, the lord ought not to be deprived of his privilege of being informed how his copyholds are disposed of. The legislature might, with equal justice, make void restrictions of a similar nature in the leases granted by the Marquess of Westminster and other landlords. It might, however, be provided, without much injustice, that every tenant should be at liberty to prepare his own surrender in the customary form,^a which, in many manors, is already the practice, and also to execute it without communication to the lord or steward; but he should be bound to present it to them within a certain time.

The bill makes it imperative on lords, as well as their stewards, to receive and endorse any instruments which may be brought to them,—a duty to which the former have not hitherto been considered liable.

Every lease is to be valid without a license. This is another invasion of the rights of one party for the convenience of the other. It is a condition of the tenancy that the tenant shall not demise without a license, and the tenement is purchased or acquired subject to that condition. Why should the tenant be discharged from it without paying the lord the value of the discharge? If the lord is compelled to give up any of those privileges, which, although of no intrinsic value to himself, constitute part of the difference in value between copyhold and freehold property, his other rights are rendered much less available to him. As the copyhold interest becomes more valuable, the lord's interest, which is measured by the price of enfranchisement, is reduced.

It is also provided by the bill that fines for land granted for building purposes, shall not exceed twice the yearly rent reserved. If this clause is passed, most tenants will contrive to make a lease to limit the fine, and the value of the manor will be much diminished. Those lords however, whose stewards have fortunately neglected to keep up their rights will not suffer by this provision.

There are other objections to the present form of the bills which are not so material, but they will add to the difficulties of the subject. I continue to think that neither of the bills will accomplish the object of the public, and that the best and safest measure would be to empower a certain majority of the parties interested in a manor, to enfranchise the whole on terms to be awarded by local commissioners, as upon an enclosure of wastes.

R. B.

^a What will the stewards of manors say to this suggestion? Ed.

PRACTICAL POINTS OF GENERAL INTEREST.

SERVANT AND APPRENTICE.

In *Sellen v. Norman*, 4 C. & P. 80, it was held that a master is not bound to provide a menial servant with medical attendance and medicines, during sickness; but if a servant fall ill, and the master call in his own medical man to attend such servant, the master will not be allowed to deduct the charge for such medical attendance out of the servant's wages, unless there be a special contract between the master and servant that he should do so. The same opinion was given in the following case, but held not to apply to an apprentice.

The prisoner was indicted for the manslaughter of Benjamin Broadway, his apprentice, by neglecting and refusing to provide him sufficient meat and drink, and forcing him to lie in an unwholesome room, without proper bedding, &c. and for neglecting and refusing to supply him with proper and necessary apparel, &c. The deceased was bound to the prisoner by indenture, dated the 29th of December, 1834, having previously worked for him as errand boy for twelve months, during which time his mother provided him with food and clothes. The master covenanted by the indenture to find clothes and victuals for the deceased, and the complaint was that he did not do so. There was contradictory evidence as to the treatment of the deceased in respect of food, clothing, and bedding. He died in Islington workhouse, on the 18th August, 1837, having typhus fever, produced, according to the evidence of some medical men, by uncleanness and want of food.

Patteson, J., (in summing up), told the jury, that by the general law, a master was not bound to provide medical advice for a servant; *Sellen v. Norman*, 4 C. & P. 80; *Rex v. Saunders*, 7 C. & P. 277; yet that the case was different with respect to an apprentice, and that a master is bound, during the illness of his apprentice, to provide him with proper medicines; and that if they thought the death of the deceased was occasioned, not by want of food, &c., but by want of medicines, then, in the absence of any charge to that effect in the indictment, the prisoner would be entitled to be acquitted.

Verdict; Guilty; sentence, one year's imprisonment. *Reg. v. Smith*, 8 C. & P. 153.

NEW BILLS IN PARLIAMENT.

INTIMIDATION OF VOTERS.

This is a Bill "to prevent Threats or attempts at Intimidation to Voters, to influence their Votes for Members of Parliament." It recites that by 1 Wm. & M. s. 2, c. 2, it was enacted "that the election of members of parliament ought to be free," and that this is among "the true, ancient and indubitable rights and liberties of the people of this kingdom, and shall be firmly and strictly holden and observed:" And that in many places threats and attempts to intimidate have been used towards voters for members of parliament, in order to influence their votes at elections:

The proposed enactments are as follows:

1. That from and after the passing of this act, it shall be unlawful for any landlord, employer, master, customer, or other person whatsoever, at any time, either by himself or his agent, by word, act or deed, message, writing or in any other way, to use any threat or intimidation towards any voter for any member of parliament, or make any attempt to intimidate any such voter, in order to influence his vote at any election for any such member, or with intent to punish or injure any such voter for any vote which he may have given or withheld at such election as aforesaid.

2. That any person so offending as aforesaid, shall be guilty of a misdemeanor; and the trial of any indictment for such offence shall take place at the assizes to be holden in and for the county or county of a city within which such offence shall be alleged to have been committed; and in case any person shall be convicted of such offence as aforesaid, he shall be liable, at the discretion of the Court before which such indictment shall be tried, to be fined any sum not exceeding one hundred nor less than fifty pounds.

3. And be it enacted, that every indictment for any offence under this act shall be preferred within twelve calendar months next after the time when the said offence shall have been committed.

COPYHOLDS ENFRANCHISEMENT.

This is a Bill "To facilitate the Enfranchisement of Lands of Copyhold and Customary Tenures."

1. That in the construction of this act the word "manor" shall extend to a manor and reputed manor, whether of freehold or of copyhold tenure, but in the case of a manor of copyhold tenure, shall mean exclusively the tenure commonly called "copyhold of inheritance," and "copyhold for lives or years," where, according to the custom of the manor

of which such copyhold manor is parcel, the copyholders have a perpetual right of renewal, or any undivided share thereof; and the word "lands" shall extend to manors and reputed manors, and to messuages, lands, tenements, rents, tithes and hereditaments of any tenure whatsoever, (except the tenures respectively called "customary freehold," "tenant right," "copyhold," and "customary,") whether corporeal or incorporeal, or any undivided share thereof; but when accompanied by any expression including or denoting copyhold tenure, shall extend to manors and reputed manors, and to messuages, lands, tenements, rents, tithes and hereditaments of that tenure, whether corporeal or incorporeal, and shall, except where otherwise expressed, mean exclusively such manors, reputed manors, messuages, lands, tenements, rents, tithes and hereditaments as are of the tenures commonly called, "copyhold of inheritance," and also such as are commonly called, "copyhold or lives," or "for years," where, according to the custom of the manor of which the lands are parcel, the copyholders have a perpetual right of renewal, or any undivided share thereof; and the word "estate" shall extend to an estate in equity as well as at law; and the expression "particular estate" shall include every estate whatsoever, except an estate in fee-simple absolute for which any person now is or hereafter shall be seised, or possessed or entitled in his own right and for his own use and benefit, and except an estate in fee-tail, general or special, and also except an estate vested in any person by way of mortgage or charge, or as a trustee, or as a mere lessee or assignee of any lease; and except, both as to manors and lands (not being "copyholds for years"), an estate for the residue then unexpired of a term of ninety-nine years absolute, or any fewer number of years absolute vested in any person not being a mere lessee or assignee of any lease; and except both as to manors or lands, being "copyhold for years," an estate for the residue then unexpired of a derivative term of ninety-nine years, or any fewer number of years absolute vested in any person not being a mere lessee or assignee of any lease, but shall include, "an estate tail after possibility of issue extinct;" and the expression "annual rent" shall mean exclusively an annual rent granted in consideration of an enfranchisement made or obtained under this act; and the expression "apportioned annual rent" shall extend to an annual rent granted in consideration of an enfranchisement made or obtained under this act, and also to any apportioned part of such annual rent, and any undivided share thereof respectively; and the word "person" shall extend to a body politic, or corporate or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the mascu-

tionment of such annual rent, might have done so independently of this act.

18. Annual rents and gross sums charged on lands under this act to be first charges on such lands.

19. Persons to be considered entitled to manors, lands or annual rents, notwithstanding the same shall be charged or incumbered.

20. Lands enfranchised shall be held of the lord of the manor in free and common socage, subject to the rents payable for such lands at the time of their enfranchisement.

21. If the person to make any enfranchisement, &c. shall be an archbishop or bishop, then such enfranchisement, &c. shall be made with the consent of the dean and chapter, &c.

22. If the person to make any enfranchisement, &c. shall be a dean and chapter, &c., such enfranchisement, &c. shall be made with the consent of the bishop.

23. If the person to make any enfranchisement, &c. shall be an archdeacon, such enfranchisement, &c. shall be made with the consent of the bishop.

24. If the person to make any enfranchisement, &c. shall be a lay corporation founded in a cathedral church, such enfranchisement, &c. shall be made with the consent of the dean and chapter.

25. If the person to make any enfranchisement, &c. shall be a dean of a peculiar, such enfranchisement, &c. shall be made with the consent of the bishop.

26. If the person to make any enfranchisement, &c. shall be a parson or vicar, &c., then such enfranchisement, &c. shall be made with the consent of the patron and ordinary.

27. Enfranchisements of lands, or apportionments of or releases from annual rents, shall be made with the consent of the persons entitled to estates for years, mortgages or charges.

28. Conveyances, grants, charges and apportionments shall be made with the consent of persons entitled to estates for years, mortgages or charges.

29. Where manors shall be held on lease, an enfranchisement shall not be made without the consent of the lessee.

30. Where lands proposed to be conveyed shall be held on lease, with other hereditaments, at an entire rent, the person empowered to make such conveyance shall concur with the lessee and the person to whom such conveyance shall be made in apportioning such rent.

31. Where lands proposed to be charged with an annual rent or a gross sum shall be held on lease, and the rent payable under such lease shall be less than the annual rent or the interest on such sum, no such charge shall be made without the consent of the lessee.

32. When lands charged with an annual rent proposed to be apportioned shall be held on lease, no such apportionment shall be made without the consent of the lessee.

33. Sub-lessees not to be liable in consequence of any charge or apportionment, to the payment of a greater sum than they were before liable to.

34. Persons whose consents are requisite to an enfranchisement, &c. under this act, to be considered entitled to the estate, &c. in respect of which their consent are required, notwithstanding the same shall be mortgaged, &c.

35. If the person to enfranchise any lands, or apportion or release any annual rent, shall be an infant or lunatic, the guardian of such infant or committee of such lunatic shall be substituted in his place.

36. If the person to obtain an enfranchisement of lands, or a release from an annual rent, shall be an infant or lunatic, the guardian of the infant or committee of the lunatic shall be substituted in his place.

37. Gross sums of money to be paid for the enfranchisement of lands and the release from an annual rent shall, except in the case of an ecclesiastical corporation, be paid to trustees to be appointed by two barristers of seven years' standing, &c.

38. Gross sums to be paid for the enfranchisement of lands, or the release of an annual rent, shall, in the case of an ecclesiastical corporation, be paid to the governors of Queen Anne's Bounty.

39. The receipts of the persons to whom any gross sums shall be paid pursuant to this act shall be sufficient discharges, &c.

40. Persons to whom gross sums shall be paid pursuant to this act, shall apply the same in paying off charges affecting the manor or annual rent, or in the purchase of other estates, to be settled to the same uses, or in the redemption of the land-tax, and in the mean time invest the same in government or real securities.

41. A person may enfranchise under this act, notwithstanding the person obtaining it may do so independently of this act.

42. A person may enfranchise under this act, although enabled to do so independently of this act.

43. The previous provisions in this act not to affect powers of appointment.

44. Every enfranchisement, &c. under this act to be made by the same assurance as if the person making the same had been seized in fee at law, and such assurance shall operate by transmutation of possession, and pass as estate in fee simple at law.

45. Where the concurrence of any person is required to any enfranchisement, &c. the same shall be given by the same assurance by which the enfranchisement, &c. shall be made.

46. Lands conveyed and annual rents granted on enfranchisement shall be subject to such settlements, wills, &c. and no other, as shall affect the manor.

47. Lands conveyed in consideration of the release of an annual rent shall be subject to such settlements, wills, deeds, &c., and no other, as shall affect such annual rent.

48. Lands enfranchised shall be subject to such settlements, wills, &c., and no other, as shall affect such lands at the time of the enfranchisement.

49. Lands which shall be released from an annual rent shall be subject to such settlements, wills, &c. and no other, as shall affect such lands at the time of the release.

50. Assurances to be binding on all persons having claims on the manors, lands or annual rents comprised in such assurances, and recitals therein to be conclusive evidence.

51. If, at any time of the conveyance of any lands in consideration of an enfranchisement, there shall be a lease subsisting, the person to whom such lands shall be conveyed shall have the reversion on such lease, and may distrain for the rents and enforce the covenants, &c.

52. If, at the time of the enfranchisement of any lands there shall be any lease subsisting therein, the freeholder shall have the reversion on that lease, and may distrain for the rents and enforce the covenants, &c.

53. After the 31st of December 1838, no voluntary grants shall be made of lands to be held by copy of court roll.

54. When and as, after the 31st December 1838, lands held by copy of court roll for lives or years, where there shall not be a perpetual tenant, right of renewal shall become vested in the person entitled to the manor, and such person shall be so entitled as lessee or for a particular estate, such person may demise such lands for the same estate, &c. for which the lands could have been granted out as copyhold if this act had not passed.

55. Powers of this act extended to trustees for colleges and other charitable and public purposes, and also to trustees and other persons empowered to sell.

56. The provisions of the act applicable to copyholds to apply to customary freeholds.

NOTICES OF NEW BOOKS.

An Abridgment of the Law of Nisi Prius.

By P. Brady Leigh, Esq., of the Inner Temple, Barrister at Law. Two volumes. London : H. Butterworth, 1838. pp. 1620.

Our readers are aware, that since Mr. Justice Buller's excellent Introduction to the Law relative to Trials at Nisi Prius, (the 7th edition of which was edited by Mr. Bridgman in 1817,) several works in the same department of the law have been published. Amongst these, the best known, is that of Mr. Selwyn, bearing the title of *An Abridgment of the Law of Nisi Prius*, the success of which may be estimated by its having just arrived at the 9th edition. Mr. Roscoe also published a *Digest of the Law of Evidence on the Trial of Actions at Nisi Prius*, which reached a third edition in 1834. The edition of Mr. Selwyn's work, prior to the last, was published in 1831; and no new edition having appeared for some years, the present author was probably encouraged to enter the field which Mr. Selwyn seemed thus for some time to have quitted; and he was perhaps further induced to un-

dertake a new work on the Law of Nisi Prius, in consequence of Mr. Roscoe's decease, some time after the completion of his last edition. If Mr. Leigh calculated that his learned predecessor would abandon the task of digesting and expounding the Law of Nisi Prius, he has evidently been mistaken, for a short time prior to the publication of the present volumes, (but which, judging from their bulk, must have been nearly completed,) Mr. Selwyn's last edition made its appearance.

It is no part of our duty to institute comparisons between rival works. In these notices, it is sufficient, in general, that we make known to our readers, the nature of the new works offered for their aid and instruction, and thus enable them to find the assistance they require. On the present occasion, we shall therefore merely state the principal subjects comprised in the work before us, and point out the manner in which the author has executed his task.

The work, then, comprises :

1. The Action of Assumpsit.
2. The Action on an Attorneys' Bill.
3. Bankruptcy.
4. Bills of Exchange and Promissory Notes.
5. Carriers.
6. Actions on the Case.
7. Covenant.
8. The Action of Debt.
9. Detinue.
10. Distress.
11. Ejectment.
12. Executors and Administrators.
13. The Statute of Frauds.
14. Fraudulent Misrepresentation.
15. Husband and Wife.
16. Insurance.
17. Statutes of Limitation.
18. Malicious Prosecution.
19. Practice in Trials at Nisi Prius.
20. Replevin.
21. Slander.
22. Trespass.
23. Trover.
24. Warranty of Horses.
25. Wills.

The author states his design to have been the production of a work treating of this branch of the law with more minute accuracy than any existing publication, and to introduce into his compilation every point and case of practical importance relating to the subject which it embraces. This design we think he has very satisfactorily fulfilled. And he has incorporated into his work all the changes in the law and practice effected

as well by the recent statutes, as by the Rules of Court, and by the cases decided, so far as they are applicable to the Law of *Nisi Prius*.

In stating the principles of the law, as laid down in the authorities, the author has given the language of the Court,—a course which he deemed more satisfactory than any other he could have pursued. The rules of pleading and evidence applicable to each class of actions are also incorporated under their appropriate heads.

We think that Mr. Leigh has bestowed great pains in digesting his materials and bringing the law down to the present time; and that his work has been executed with learning and judgment.

ON THE MODE OF EXAMINING ARTICLED CLERKS.

To the Editor of the Legal Observer.

Sir,

In looking through the numerous questions that have been from time to time put by the Examiners, to ascertain the competency of candidates to be admitted attorneys, I was somewhat surprised to see how, comparatively, few of them had any relation to that most important branch of our jurisprudence, the Law of Wills and Testaments.*

It is rather unaccountable, that a branch so replete with reason and wisdom, and so well adapted to the wants and exigencies of our present state of society should be so much neglected and overlooked, and that entirely by some young students. Surely, it cannot be said to be subordinate to the other branches of our Code of Laws, and therefore undeserving of that attention which the importance of it demands, or that it is one which can be acquired with great facility and little labour, and that therefore it may be postponed to a future period. If such be the arguments used by any, I would fain advise them to be cautious how they allow themselves to be made captives by it, for they may depend no good will ever arise from it.

These observations have suggested themselves to me, not from a want of confidence in the present adopted mode of examination,—for in my opinion, the Examiners have, with few exceptions, displayed great discrimination in the choice and selection of their questions; and the practical bearing and tendency of them are well adapted to answer the desired purpose; but they are thrown out more particularly with a view to call the attention of students to this subject, than with any

* We understand that at the recent examinations, no questions were put relating to the Law of Wills, because it was deemed unreasonable to expect that the new act could be sufficiently understood so soon after its having passed. Ed.

other: for it ought to be borne in mind, that an attorney possessing a right knowledge and understanding of this branch, and using it skilfully and honorably, is not only an ornament to the profession in general, but to society at large—for it is to be feared, that too many of those cases of collective and individual hardships that are frequently occurring, are occasioned by a judgment pronounced against the validity of a will drawn by some unskilful person. There is no lack of examples found wanting to substantiate this. Numerous are the instances where, not only individuals, but whole families have been deprived of those comforts and comparative ease which they had a right to expect, and reduced to a state of the most abject want and misery. This alone ought to excite compassion, and stimulate the tyro to exert his energies to the best of his ability in endeavouring to avert so much calamity, and make him resolve within himself that whilst he has the opportunity, he will endeavour to make himself such a master of the above mentioned branch, as will redound to his credit and respectability hereafter.

It may be observed, that by the recent act of parliament, several of those useless formalities, the non-observance of which caused the subversion of many a will and testament, have been entirely swept away, thus making the law most simple and reasonable to the mind of the young student. O.

Sir,

Through the medium of your valuable periodical, I wish to convey a few hints respecting the *Examination of Articled Clerks*, to those who have the power to make any alterations or improvements they may think advisable, and also to conduct the examination; hoping that though they may not entirely concur with me, yet that from these observations they may modify the future examinations, so as to come near the object of my observations.

Would it not be advisable to give each candidate a fair opportunity to distinguish himself in one branch of the profession only, *viz.*, that which had been his only and sole study, either perhaps from an enthusiastic zeal, or from not having the means of studying more. Take for example, a young man of strong talents, who has an ardent thirst to distinguish himself in a particular branch of the law, and therefore during his clerkship, studying that particular branch, how would he feel to have so many parts of the law proposed for his answering? Now supposing he had been studying Conveyancing alone, we may see that it would be highly advantageous that such a course should be adopted as would aid the praiseworthy zeal of such as have adopted that course. I myself hope and trust that at the end of my clerkship, I shall have sufficient knowledge of the Laws of Real Property, that I should not draw back were the whole seventy-five questions proposed on the general principles and practice of Conveyancing.

W. R. B.

[The objection to this proposal is, that the

Examiners are required to certify whether the candidate be fit and capable of acting as an attorney, and a knowledge of Conveyancing alone, is therefore insufficient. It is surely no great hardship to read some of the concise works which have been lately published expressly for the use of students, from which in the course of a few months they may acquire a large stock of knowledge. Ed.]

Sir,

I feel honoured by your observations on my last letter, but cannot say that they have induced me to alter my opinion on this subject. I stated that an excellent examination, passed on real property law, would shew the candidate sufficiently qualified for country practice. I wish merely to answer a note of yours, wherein you ask how the examiners can in that case give a certificate of qualification to practise as an attorney and solicitor, without the common law and equity questions having been duly answered? I look upon your objection in this light:—I first presume that the examination was instituted for the *public benefit*; and I also presume, and which will of course be admitted as a fact, that the practice of country solicitors principally relates, and in many cases is exclusively confined to, conveyancing. The case then appears to resolve itself into this question. Is it for the public benefit that the solicitor should possess a competent knowledge of the business which daily occupies his attention, or of that which little concerns him; or in other words, which will benefit the class of clients among whom he has settled, his legal knowledge or his legal ignorance? The answer is obvious. Again, if your objection holds with regard to the common law and equity, the examinant ought, *pari ratione*, to answer correctly in every branch,^a and consequently must be prepared in the *theory and practice of every possible question of law*, for it is uncertain what question he may be asked. The soundest lawyer this kingdom ever knew, Lord Coke, says that "*viginti annorum lucubraciones*," will hardly make a man possessor of a thorough knowledge of the laws of this country, yet the boyish student of two or three years is expected to become an intellectual atlas, and support the mental burden of "the statutes at large!"

An eminent counsel, lately remarked to me, that although he was noted in his youth for legal acuteness, and a facility of solving complicated cases, yet that he could not then have stood a miscellaneous examination like the present; but, when confined to a particular case, he was seldom wrong in his legal conclusions.

^a Though the examiners' certificate bears testimony to the candidate's fitness and capacity to act as an attorney, it is not necessary that he should be able to answer every possible question that may arise in practice; but the Examiners will scarcely take the other extreme, and pass him when he cannot answer any question of law or practice. Ed.

Far be it from me, as you perceive, to object to the system,—the principle,—of examination. My main view is to shew the vast room there is for the indulgence of the examiners, particularly with relation to the *intended practice* of the respective candidates.

AN OLD PRACTITIONER.

USAGES OF THE PROFESSION.

COPYHOLD PRACTICE.

Sir,

In answer to your correspondent "A Steward of a Manor," (p. 360,) I would suggest to him that he is not bound to grant a deputation to take a surrender in the country, nor, I apprehend, to take a surrender out of Court in any case. If the solicitor for the purchaser declines to pay the stewards' fees for preparing the surrender, I think the steward might very properly refuse to grant a deputation.

See *The King v. Rigge*, 2 B. & A. 550.

A BARRISTER AND STEWARD OF A MANOR.

LAW OF ATTORNEYS.—ANNUAL INDEMNITY BILL.

OUR readers are aware that an Indemnity Act is annually passed for the relief of persons who have omitted to take the usual qualification oaths, and extending the time for such purpose, and to authorize the enrolment of articles of clerkship after the usual time, and provide against defects in the qualification of the attorney with whom the contract has been made: viz. where such attorney has not taken out his annual certificate, or where there may have been a defect in the articles, enrolment, or service of such attorney. All this may be proper enough,—supposing due proof be adduced that such defects were inadvertent, and that there is no ground to suspect fraud. But then comes a clause enacting that applications for striking attorneys off the roll for defect of articles, registry, service, &c., must be made *within twelve months from the time of admission*. In the act 5 & 6 W. 4, c. 11, a proviso was added that such articles, registration, service, admission, and enrolment should be *without fraud*. This new clause, by way of statute of limitations, passed for the first time on the 3d July, 1835; and it is remarkable that in each subsequent year the limitation clause was re-enacted, without the exception against fraud.

The consequence of this is, that if a person who by fraud, or improper means, obtained admission on the roll in November, should purposely delay taking out

his certificate till after the 1st January, his name would not appear in the law list of that year; and the fact of his being in actual practice might thus, by his own contrivance, remain unknown to the persons who were acquainted with the fraud or misconduct, until the twelve months had expired, and then all remedy would be at an end.

Now this is no imaginary case. A grievance very similar to it has actually occurred. A person was admitted in Michaelmas Term, 1835. In the following year information was given to the Incorporated Law Society of the party having served only nine months instead of five years; although the whole period was sworn to. An application was made to strike him off the roll, and a rule *nisi* granted. Before that rule came on for argument, the Court in another case laid down a new rule of practice, that no attorney should be called upon to shew cause where the affidavits in support of the motion were made on information and belief only. When, therefore, the motion for making the rule absolute came on, this intermediate decision was brought forward, and the rule was discharged, but without costs. It happened curiously enough that although the attorney thus shut out the discussion of the merits by an objection in point of form, he did not rely on the objection, but made a long affidavit in explanation of the charge against him, and this affidavit being filed, it turned out, on perusal, to substantiate the principal facts regarding which the deponents on the other side had only sworn to information and belief. A new application was therefore made, supported by new affidavits, and by an office copy of the affidavit, which the attorney had thus unguardedly sworn. A rule *nisi* was again granted; but, before it could be brought on, the twelve months limited by the statute had expired. The counsel for the attorney took the objection that the application was out of time, and although the counsel for the Law Society contended that the case before the Court could not be within the meaning of the statute for providing against mere defects, it was decided that the statute barred the application. As the question was argued at great length before the full Court, we must presume that it is clearly set at rest.

Independently of the case to which we have referred, and where a denial of justice seems to have arisen from the omission of the proviso against fraud, it is obvious that numerous other cases may arise where the misconduct or fraud may be still greater, and where the jurisdiction of the Court

should not be precluded. It is worthy of notice that even in the important act for the limitation of real actions, 3 & 4 W. 4, c. 27, provision is expressly made against fraud. By the 27th section, in every case of concealed fraud the right is saved, and deemed to accrue from the time at which the fraud shall, or with reasonable diligence might, have been known or discovered.

We take this matter up: 1st, on behalf of the public, whose protection is secured by a conformity to the law; and 2ndly, on the part of the profession, because it is manifestly unjust to those who have paid large sums to the revenue, and have faithfully conformed to the law in all respects, that persons not duly qualified should be permitted to exercise equal rights, and possess the same privileges with themselves. We trust, therefore, that the Indemnity Bill now before the House of Commons will be amended, and the proviso against fraud be again introduced. It should be recollected that the effect of the proviso is merely to save the jurisdiction of the Courts, which they possessed from the earliest times until the Indemnity Act of 1835; and there can be no apprehension that they will lend too ready an ear to applications of a penal nature.

We have not been able to procure a printed copy of the Indemnity Bill now before the House, and are told that it will not be printed. We understand it is in the nature of a private bill, though prepared in one of the Government offices. Nothing is known by the public or the profession of the contents of such bills. The votes shew that the "Indemnity Bill" was read a second time on the 17th March, and committed. No wonder that the omission of the proviso occurred in the former acts, for nothing is seen till the act itself appears. Surely this is not a correct way of altering the public statutes, and enacting clauses in the nature of statutes of limitation.

SELECTIONS FROM CORRESPONDENCE.

JUDGE'S STAYING PROCEEDINGS ON TERMS.

Sir,

In the Legal Observer, p. 312, I perceive an attempt on the part of your correspondent G. H. to oppose the alteration in the law as regards giving power to a judge to make an order on the application of a defendant to stay proceedings on payment of debt and costs in the same time as the plaintiff could obtain judgment. I admit that this step might be taken by a malicious defendant; but in the course of

my professional career, I must confess, that on very many occasions, defendants who have not had the means to pay, would have done so, had not the plaintiff been stubborn and refused to allow any time to the defendant; and his only course was either to go through the Insolvent Court, or to become bankrupt; and I am quite sure that the Commissioners of the Insolvent Court will bear me out in this assertion.

I think a discretionary power ought to be given to a judge to make what order he thought proper; of course being restricted not to allow a greater length of time than the plaintiff could (were he to go to trial) recover his debt; but at present he possesses none.

A CONSTANT READER.

DOVER.

Sir,
After the wife's right to dower under the old law has attached, the right may be considered for every purpose as a *vested estate* in the wife, as no act of the husband can take it away without the concurrence of the wife. Under this view of the case, then, it must be allowed that it would be extremely unjust in the legislature to take away the wife's estate in her dower, and quite contrary to all principles of law or equity.

The statute 3 & 4 W. 4, c. 105, s. 14, expressly enacts, "That this act shall not extend to the dower of any widow married on or before the 1st January, 1834." The act has altogether denied effect to any declaration, *de iure* the husband, in regard to women married on or before that day. How then can any doubt arise on the point? In the case put by M. M., p. 312, the purchaser would certainly require the wife to join in the conveyance, and acknowledge the deed in the manner directed by the act, otherwise he would take the estate subject to her dower.

For an exposition of the Dower Act, M. M. is referred to Hayes' Introduction to Conveyancing, where the subject is very ably treated.
T. R.

CROSSING BANKERS' CHEQUES.

Sir,

The difficulty suggested by A. B., in your last number, (p. 377), is, in practice, obviated by writing the name of the account to which the cheque is to be passed, as well as the banker's name across the cheque. Thus: "Pay, Coutts & Co., to the account of John Jones."
J. B.

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—DECREE PRO CONFESSO.—CONTEMPT.

A bill was taken pro confesso against a defendant for want of answer, and a decree was made to take the accounts before the Master of what was due to the plaintiff.

The defendant was not served with the warrants for attendance before the Master on executing the decree, and the report was confirmed absolutely in the first instance: Held, that the defendant ought to have been served with warrants for attending the Master in taking the accounts, and an order nisi to confirm the report ought to have been first obtained, and that the defendant's being in contempt did not preclude him from moving to discharge the order to confirm the report absolutely.

Mr. Elderton moved to discharge an order obtained *ex parte* to confirm the Master's report absolutely in the first instance. The bill was filed for foreclosing a mortgage, and was taken *pro confesso* for want of an answer. The decree directed the usual accounts in such cases to be taken by the Master of what was due to the plaintiff for principal and interest. They proceeded, attended by the plaintiff, but no warrants or notice of attending the Master were served on the defendant, and the accounts were taken, and the report made in his absence. The plaintiff next obtained an order *ex parte* to confirm the report, and it was confirmed accordingly. That was the order which the defendant complained of—it was wholly irregular. Although the decree was taken *pro confesso*, still the defendant ought to have notice of the taking of the accounts before the Master. He might then shew that the plaintiff's demands were wrong. The decree ought to be executed in the usual way, and the defendant ought to have been served with warrants of the Master's appointments. All the proceedings were taken in the defendant's absence, and the report so irregularly made was made absolute in the first instance. The plaintiff obtaining a decree *pro confesso*, was still bound to prove his charge before the Master. *Dominicetti v. Latti.*

Mr. Purnis, for the plaintiff.—The defendant being still in contempt ought not to be heard in Court until he cleared his contempt. In no case can a party in contempt be heard in any application, except on application to clear his contempt. *Fowler v. Young*,^a *Anony.* 15 Ves. 174; *Lord Wenman v. Osbaldeston*;^c *Beames Orders*, 35; *Odell v. Hans*.^d It was quite regular to confirm, without an order nisi, reports made on decrees *pro confesso*. *Dominicetti v. Latti.*

The Lord Chancellor.—The plaintiff in this suit has taken a decree *pro confesso* against the defendant, and the Master, under the reference directed by the decree, has reported the amount of the sums due to the plaintiff. I wished to have it argued whether the plaintiff was regular in his proceedings to make the Master's report absolute in the first instance. In my opinion no practice can justify the course that has been taken, especially if the defendant is not allowed by the Court under the circumstances to be heard to move for setting aside these proceedings. The plaintiff

^a 2 Dick. 583.

^c 2 Bro. P. C. 176.

^b 9 Ves. 173.

^d 1 Molloy.

might have given notice of his proceedings, and the defendant might then have made an application to the Court relative to them; and the right to the payment of the costs by the defendant to plaintiff would then have been in no danger of being waived. I am informed by the registrar that it is irregular, in a case like the present, to obtain an order confirming the Master's report absolutely in the first instance. The Court takes advantage of the defendant's not answering the bill, and gives the plaintiff the usual decree of reference to the Master; but it is the duty of the Court, having done that, afterwards to see that the decree is executed in the ordinary way. The accounts before the Master ought not to have been taken *ex parte*. In the case of *Dominicatti v. Lutti*, cited for the defendant, of which I have the notes from the registrar's book before me, the Master was not proceeding to take the account *ex parte*, but the account there went on in the usual way. A reference was in that case made to the Master, and the plaintiff took exceptions to the Master's report which were overruled, the bill having been previously taken *pro confesso* against the defendant. I am asked by the defendant's petition to protect him as regards further directions; and I consider myself bound to interfere on his behalf. The order absolute confirming the Master's report must be discharged, and also the *ex parte* proceedings in the Master's office. There must be no costs allowed the plaintiff for the attendances in the Master's office; but the defendant is to be allowed the costs of this application; and they must be set off against the costs due from him to the plaintiff, in respect of the process for putting the defendant in contempt.

King v. Bryant.—At Westminster, January 31, 1838.

Rolls.

ALLOWANCE TO MARRIED WOMAN.

In a suit for the administration of an intestate's estate, it appearing that there would be a large residue for the next of kin, but that the accounts could not be finally made up for some time; upon the application of one of the next of kin, a married woman, whose husband was abroad, and made no provision for her, a competent allowance was ordered for her maintenance out of the estate.

This was a suit by a Mrs. Sanders, by her next friend. Mrs. Sanders is a married woman, whose husband is an artillery man, serving in the East Indies, having left this country eleven years ago, and contributed nothing to the support of his wife ever since. She is one of the children of Thomas Stunt, who died intestate; and the object of the suit was to have an account taken of his estate and effects. It appeared that he died possessed of 24,800*l.* in the three-and-a-half per cent. stock; and he was also possessed of several leasehold houses, which had been sold, and produced 4,800*l.* The defendants, who were the administrators and other next of kin of the intestate, by their

answer admitted that they had set apart two sums of 6,115*l.* 7*s.* 6*d.*, and 421*l.* 16*s.* for the share of the plaintiff, Mrs. Sanders, as one of the next of kin of the intestate. Mrs. Sanders now prayed, that as it would take a considerable time to make up the accounts finally, an allowance at the rate of 180*l.* a year might be paid her in the mean time for her maintenance out of the fund.

Mr. *Pemberton*, and Mr. *G. Richards*, in support of the application, cited the cases of *Caster v. Caster*; *Atherton v. Newell*,^b and *Guy v. Parkes*.^c

Mr. *Parker* appeared for the defendants, the administrators, and said he was not instructed to oppose the application, but he thought it right to observe that the plaintiff's husband was attending his duty in the East Indies, and could not be said to have deserted his wife.

Mr. *Parker*, junr., appeared on the part of other defendants, who are other next of kin of the intestate.

Lord *Langdale*, M. R., said he was glad to hear the authorities cited in behalf of the application, as he should otherwise have found some difficulty in making the order. He should make an order for the account, and direct the payment of the allowance prayed for.

Sanders v. Mitchell.—Sittings at the Rolls, December 23, 1837.

Queen's Bench.

[Before the Four Judges.]

MUNICIPAL CORPORATION.

Though a corporation authorises its chamberlain to appoint an assistant chamberlain, and pays that chamberlain out of corporate funds, he is nevertheless not an officer of the corporation, but may be dismissed without being entitled to compensation under the Municipal Reform Act.

Sir *W. Follett* applied for a rule to shew cause why a *mandamus* should not issue to the Lords of the Treasury, commanding them to award to Mr. Harvey compensation for the loss of an office in the corporation of Bath. The office in question was that of assistant chamberlain. In 1794, the office of assistant chamberlain had its origin in a resolution of the corporation, passed on the representation of its chamberlain, who complained of the pressure of business in his office. In 1810 the person who then acted as assistant chamberlain resigned, and Mr. Harvey was applied to on the subject of becoming his successor. A resolution of the corporation was passed in that year, stating that the chamberlain having reported the state of the accounts, and the subject-matter of the business of his office, assistant, or clerk of an officer of the corporation, but not himself an officer of the body.

Per Cur.—Rule refused.—*The Queen, Ex parte Harvey, v. The Lords of the Treasury*, H. T. 1838.

^a 1 Keen, 199.

^b 1 Cox, 229.

^c 18 Ves. 196.

See next page

went on to report that Mr. Harvey was a proper person to take on himself the duties of assistant chamberlain, whereupon the common council of the city resolved, "that the present chamberlain be, and he is hereby authorised to appoint Mr. Harvey to act as assistant chamberlain. On the 17th of March 1910, he was accordingly appointed, and on the 25th of that month he entered on the duties of his office. The corporation by the original resolution creating the office, undertook to pay the assistant chamberlain 100*l.* a year, and he was paid out of money received by the authority of the corporation. On the passing of the Municipal Corporation Act, the new town council removed Mr. Harvey from his office, and refused him any compensation. He appealed to the Lords Commissioners of the Treasury, who supported the refusal of the town council, and made an order stating that he was not an officer of the corporation, and that consequently he was not entitled to compensation. This order was alleged to be made under the guidance of the opinions of the law officers of the Crown. There could be no doubt that the order was erroneous. Mr. Harvey had called the attention of the Lords Commissioners of the Treasury, to the case of *The King v. The Bridgwater Corporation*,^a where the Court held, that in cases like the present, the word "officer," was not strictly construed. The Lords Commissioners however, adhered to their order, and refused Mr. Harvey compensation. The points on which he now submitted his claim to the Court were, that under the words of the Municipal Corporation Act, though he was not an officer appointed under the charter of the corporation, yet he was an officer appointed by the corporation, having been appointed in consequence of a resolution of that body; and that the corporation likewise had paid his salary, and had exercised with regard to him, a power of removal, such as every corporation claimed to possess over its officers. If this Court saw that the Lords of the Treasury had decided wrongly in point of law, it would correct their decision. The point here was the right to compensation, not the question of its amount, and the Lords of the Treasury had misapplied the law, and therefore the Court would interfere to set them right.

Lord Denman, C. J.—This case is clearly distinguishable from the *Bridgwater* case, where the party appointed by the corporation, and being strictly an officer of the corporation, for he was town clerk, held besides an office which had always been attached to his corporate office, but of which the new corporation thought fit to deprive him. In respect of such an office, he was entitled to compensation. But here the party, though appointed in consequence of a resolution of the corporation, cannot be said to hold a corporate office. It is the same as if the resolution had recommended the attorney to the corporation, to employ a clerk. Mr. Harvey was merely the

Queen's Bench Practice Court.

DELIVERY OF ATTORNEY'S BILL.—PLEA.— COMMENCEMENT OF ACTION.

In order to take advantage of a defence of the non-delivery of an attorney's bill a month before action brought, it must be pleaded.

Where, in a writ of trial, the defendant is stated to have been "impleaded" on a certain day, it is sufficient proof of the action having been commenced on that day.

Humfrey had obtained a rule calling on the defendant to shew cause why the nonsuit which had been entered should not be set aside, on the ground of misdirection. It was an action for an attorney's bill, and the defendant pleaded *nunquam indebitatus*. The cause came on for trial before the under-sheriff, and the plaintiff was about to prove his demand, when it was objected that the delivery of a signed bill a month before action brought, under the 2 G. 2, c. 23, had not been shewn, and also that it was necessary for the plaintiff to prove when the action was commenced, as that was not sufficiently shewn on the writ of trial. The plaintiff, however, in answer, contended that the first objection could only be taken under a special plea; but the under-sheriff directed a nonsuit.

Wordsworth now shewed cause, and submitted that the under-sheriff was right. *Morgan v. Ruddock*, 4 D. P. C. 311, was an action for an apothecary's bill, and it was held that the objection that the plaintiff was not in practice before or on the 5th August 1815, or that he had not duly obtained a certificate, need not be specially pleaded, but was available under *non assumpsit*. That case was decided on the language of the 55 G. 3, c. 194, s. 21, and the question was, whether the language of the 23d section of the statute applicable to the present case, was not equally binding on the attorney. The act provided "that no attorney or solicitor should commence or maintain any action or suit for the recovery of any fees, charges, or disbursements, at law or in equity, until the expiration of one month or more after such attorney or solicitor respectively should have delivered unto the party or parties to be charged therewith, or left for him, her, or them, at his, her, or their dwelling-house or last place of abode, a bill of such fees, charges, and disbursements." The commencement of the action therefore was prohibited until after the delivery of the bill, and proof of the delivery was consequently necessary. Then if there existed a necessity for that proof, the time of the commencement of the action must also be shewn. Here, however, there was no sufficient proof of that fact, by reference to the commencement of the writ of trial. The form of the writ was, that the plaintiff on a certain day "impleaded" the defendant; but it was quite consistent with this that the writ of trial had been issued on a former day. The present rule therefore must be discharged.

Humfrey was heard in support of the rule.

Putteson, J., was of opinion that the present

^a See L. O. Vol. 12, p. 297.

case was clearly distinguishable from that of *Morgan v. Ruddock*, for the decision in that case proceeded on the peculiar language of the Apothecary's Act, and it appeared that the proof was imposed on the plaintiff as a species of penalty, and therefore that no omission on the part of the defendant to plead the statute would relieve the plaintiff from the necessity of giving that proof; and he was clearly of opinion, that if the defendant had suffered judgment by default, the plaintiff must still have given it on a writ of inquiry. Now here the language of the act was totally different, the words "commence" and "maintain" leaving it quite at large how advantage should be taken of the objection; and although he was aware that his opinion on the Apothecary's Act was different from that of the other Judges, yet that would not affect this case. The defence here sought to be set up should have been pleaded, and was not available under *nunquam indebitatus*. Then as to the other point, that sufficient proof of the date of the commencement of the action was not given by the writ of trial, he thought that the word "impleaded" signified that the action was commenced on the day on which the defendant was stated to have been impleaded.

Rule absolute.—*Robinson v. Roland*, H. T. 1838. Q. B. P. C.

Common Pleas.

COURT OF REQUESTS.—RESIDENCE.

In an application to restrain the plaintiff's costs under the Blackheath Court of Requests' Act, the defendant describing himself as "of the Mitre Tavern, Greenwich, in the Hundred of Blackheath," and afterwards alleging that he was wholly resident at the above Tavern, before and at the time of the issuing of the writ of summons, is sufficient proof of his being resident within the jurisdiction of the hundred of Blackheath, without a substantive allegation to that effect.

Although the sum does not appear on the affidavit for which the action is brought, the Court will take it from the copy of the writ of summons which is annexed to them.

Arnold shewed cause against a rule obtained by Price, which called on the plaintiff to shew cause why he should not be disallowed his costs of action, and why he should not pay the defendant his costs of action, together with the costs of the present application. It was an action of debt, and the writ of summons bore teste on the 21st October, and was indorsed that "the plaintiff claimed 4l. 2s. 5d. for debt, and 1l. 8s. for costs." The ground on which the present rule had been obtained was, that the defendant was liable to be warned and summoned to the Court of Requests of the hundred of Blackheath, which was established by the statute 6 & 7 W. 4, c. 120. Section 74 of that statute provided, that "if any action or suit for any amount recoverable in the said Court of Requests, shall be sued or prosecuted in any of his Majesty's Courts at Westminster or elsewhere, out of the said Court of Requests, and it shall appear to the

Judge or Judges of the Court in which such action or suit shall be tried, that at the time of commencing such action or suit the defendant was within the jurisdiction of the said Court of Requests, and was liable to be warned and summoned before the said Court for such debt or demands, then and in such case, the said Judge or Judges shall not allow the plaintiff or plaintiffs any costs of suit, but shall award the said plaintiff or plaintiffs to pay such costs to the defendant or defendants as such defendant or defendants shall justly prove, before such Judge or Judges, that he or they hath or have incurred and been put to in defence of such action or suit." The affidavit of the defendant, which was one of those on which the rule had been obtained, described the defendant as "of the Mitre Tavern, Greenwich, in the hundred of Blackheath," and set forth that before and at the time of the issuing out of the writ, he was wholly resident at that tavern, and was liable to be warned and summoned to the Court of Requests for the hundred of Blackheath, and that the plaintiff well knew of his residence there, but nevertheless, on the 1st November, caused him to be served with a copy of the writ of summons at a tavern in Fleet Street, where he accidentally then was. There were also other affidavits in which it was alleged that the defendant had gone to reside on the 16th October, at Greenwich, and that he had since resided there, and that one of the deponents, some days before the teste of the writ, had called on the plaintiff, and had offered to make some arrangement for the settlement of the debt, and had then informed the plaintiff of the defendant's residence at Greenwich. An affidavit of the plaintiff was now produced, in which it was sworn that the debt was incurred for board and lodging at the plaintiff's house, and that subsequently to the defendant quitting his house, the deponent had been informed and believed that he had taken up his residence at the Johnson's Head, Bolt Court, Fleet Street, in a bed-room, at which house the defendant had been served with the copy of the writ of summons. It was now submitted, that the affidavit of the defendant was not sufficient, because it did not, in the terms of the 28th section of the act, describe him as residing, inhabiting, or being within the said hundred, or keeping or using any house, warehouse, &c. or being employed, working, or seeking a livelihood, or usually trading or dealing within the said hundred." The affidavit first described the defendant as of "the Mitre Tavern, Greenwich, within the hundred of Blackheath," and stated afterwards that he was liable to be summoned and warned to the Court of Requests of the said hundred, but he must bring himself absolutely and positively within the terms of the act, and must swear in distinct words, that he is "residing, inhabiting, or being within the said hundred," and within the jurisdiction of the Court. *Newton v. Peacock*, 1 D. P. C. 677, was an authority to the general principle, *Shirrer v. Davis*, 2 Taun. 196.

Tudal, C. J.—The 74th section requires the defendant to show himself to be within the

jurisdiction to the satisfaction of the Court. Now from this affidavit, the defendant must be taken to be within the jurisdiction, by necessary implication; but he says further, for he alleges that he was living in the hundred of Blackheath at the time of the suing out of the writ of summons, and that he was wholly residing at the tavern which he names.

Arnold objected also, that the sum which was sought to be recovered was not averred to be, "not exceeding 5*l*." The 21st section of the act gave jurisdiction to the Commissioners "to decide and determine all disputes and differences between party and party for any sum of money not exceeding 5*l*., in all actions or causes of debt, &c."

Tindal, C. J.—The amount of the debt is shewn by the copy of the writ of summons which is annexed to the affidavit to be only 4*l*. 2*s*. 5*d*., and that is sufficient.

Arnold then proceeded to comment on the affidavits, and

Price having been heard,—

Tindal, C. J.—The only question here is, whether it appears to the Court that the defendant was at the time of the issuing of the writ, "residing, inhabiting, or being" within the jurisdiction of this Court, and liable therefore to be warned and summoned before the Commissioners. Now, looking at the defendant's affidavits, it is positively sworn that he was residing at the Mitre Tavern, Greenwich, before and at the time of the issuing of the writ. But is this denied by the plaintiff? It is denied only upon information obtained by the plaintiff from a third party, whose affidavit might easily have been obtained. The rule must be absolute.

Rush, J.—The word "being," in the act, is a very awkward one for the plaintiff, and although I do not think a mere passing through the jurisdiction would be sufficient to bring the defendant within its meaning, yet I think here there is enough proved to entitle the defendant, in the absence of contradictory evidence, to have this rule made absolute.

Faughan, J., concurred.

Burns, J.—The residence at the Johnson's Head, is not sworn to from the plaintiff's own knowledge, but only on information.

Rule absolute.—*Burton v. Campbell*, H. T. 1838. C. P.

LAST DAY FOR NOTICE OF ADMISSION OF ATTORNEYS.

As the first day of Easter Term falls on Easter-day, the 15th April, the Term will be prolonged and continued two days, there being no sittings in Banc on Easter Monday or Tuesday, and the Offices will be closed from the Thursday before till the Wednesday after Easter-day: the last day for serving Notices of Admission for Trinity Term will be Wednesday the 11th April.

The Notices of Examination in Trinity Term may be served on Saturday the 14th April.

LIST OF LAW BILLS IN PARLIAMENT; WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[This bill has been referred to a Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

For Exchanging Lands in Common Fields.

Lord Ellenborough.

[This bill is in Committee.]

To remove doubts as to the validity of oaths, and to substitute affirmations. Lord Denman.

[This bill waits for second reading.]

For the further relief of Quakers, Moravians, and Separatists.

[This bill waits for second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the improvement of County Courts of Civil and Criminal Jurisdiction.

Lord John Russell.

[Leave has been given to bring in this bill.]

To provide for the access of Parents, living apart from each other, to Children of tender age.

Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[This bill stands for 2d reading on April 11.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy.

Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts.

Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland.

Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

To provide for international Copyright.

Mr. P. Thomson.

To regulate the office of Sheriff, and diminish the expenses.

Col. Davies.

[This bill stands for second reading.]

For the better Regulation of the Thames Watermen.

[For second reading.]

For indemnifying persons who have not qualified by taking the Oaths, and for the Relief of Attorneys.

[In committee.]

LAWS OF PROPERTY.

- To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.
 To amend the Law relating to Lands held by Copy or Court Roll.
 To authorize the identifying the Boundaries of Manors.

[These three bills are referred to a Select Committee. For a list of the names see p. 384, ante.]

- To amend the Law of Escheat.
 To abolish Customs affecting Lands in certain cases. The Attorney General.

[These two bills stand for second reading.]

- To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements. Mr. Lynch.

- To enable Tenants for Life and Mortgagees in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland. Mr. Lynch.

[This and the previous bill stand for second reading.]

- To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal. Mr. Lynch.

[This bill stands for second reading.]

- To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom. Lord Worsley.

[This bill stands for third reading.]

- To amend the 6 & 7 W. 4, for facilitating the Inclosure of Open and Arable Fields in England and Wales. Lord Worsley.

[This bill has been withdrawn.]

- To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

- For the further Relief of Quakers, Moravians, and Separatists. The Solicitor General.

[This bill has passed the Commons.]

CRIMINAL LAW.

- To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny. Sir E. Wilmot.

- To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges. Sir E. Wilmot.

- That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions. Sir E. Wilmot.

- To amend the Law of Libel. Mr. O'Connell.
 For the suppression of Trading on Sunday. Mr. Plumtre.

[This bill is in committee.]

LAW OF PARLIAMENTARY ELECTIONS.

- To prevent threats to voters, or attempts at intimidation. Mr. Slaney.

[This bill stands for second reading.]

- To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales." Mr. Harvey.

- To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament. Mr. Buller.

[This bill has been brought in, and is now in Committee.]

- To define and regulate the lawful Expenses at Elections of Members to serve in Parliament. Mr. Hume.

[This bill is in committee.]

- To amend that part of the Reform Act which relates to the duties of Revising Barristers. Capt. Percival.

- To amend the laws relating to the Qualification of Members to serve in Parliament.

[In Committee.] Mr. Warburton.

- To amend the Registration of Voters.

The Attorney General.

[For second reading.]

- To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

- To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases. Mr. Shaw Lefevre.

[This bill is in Committee.]

- To establish Councils for the Management of County Rates in England and Wales.

[For second reading.] Mr. Hume.

THE EDITOR'S LETTER BOX.

The irritable and indiscreet person who has written an abusive letter for the part taken in this journal relating to the examination of attorneys, should beware lest his handwriting be ascertained; and if the elegant epistle he has sent be not in his own handwriting, his tool may be found out. These persons are not aware that we have various means of knowing our correspondents, however disguised may be their communications.

We have not received the report, suggested by a correspondent, of a case, decided before Lord Abinger, in Hilary Term last, "as to the right of innkeepers detaining the person or property of their guests." There can be no doubt of the law on that subject.

W. S. is referred to Lord Teuterden's work on Shipping. The sale must be registered.

The Monthly Record for April, which will close the 15th volume of the *Legal Observer*, will contain a Digested Index of all the Cases reported in the present Volume, with a Title Page, Contents, and Index to the general matter.

The new pamphlets of Mr. Commissioner Fane on Bankruptcy Reform, and that of Mr. Wm. Fisher, on the subject of Lists of Commissioners, and the present mode of executing Fiats in Bankruptcy in the country, will probably be noticed next week.

The letter relating to the enrolment of articles of clerkship will be inserted next week.

The Legal Observer.

SATURDAY, MARCH 31, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE ENFRANCHISEMENT OF COPYHOLDS.

THE great importance, both to the profession and the public, of the bills now before Parliament relating to Copyholds, induces us to revert to this subject.

We have already said that we are friendly to a compulsory enfranchisement of copyholds, provided the rights of all parties can be properly ascertained, adjusted, and compensated; and we are desirous of promoting the fullest discussion of the subject, in order that it may be satisfactorily settled. It is, perhaps, the most important alteration in our law of tenure which has been proposed since the great change which was made in it in the reign of Charles the Second. It involves considerations affecting a very large portion of the property of the country, and is not to be accomplished, we freely admit, without great deliberation and the fullest consideration.

Several plans may be suggested for carrying out a compulsory enfranchisement:—1. Parties may be authorized to apply to the Court of Chancery, and pray an enfranchisement by a decree of that Court. A reference may be made to the Master to settle the rights of all parties, and an equitable enfranchisement may thus be obtained which may bind all parties. The great objection to this plan is the expense of a suit, which would deter many from availing themselves of it. There is, however, a precedent for it, under the Land Tax Redemption Act, which authorizes persons to enfranchise their lands for the purposes of that act. 2. A second mode is by appointing a commission, which should have full authority to abolish this tenure throughout the country. There

would be many advantages attending this plan. A uniformity of tenure would be established throughout the country; the law on this subject would be greatly simplified; the conflicting customs prevailing in manors would be reconciled. But however much we may desire such an improvement, we cannot disguise from ourselves the difficulties which would attend it. This plan would certainly meet with very great opposition. The interests of many persons are strongly in favour of this tenure—the interests of many lords, many stewards, and many tenants; but more than this, where the fine is certain, and there are no heriots or other oppressive duties, there are unquestionably advantages attending copyholds. We have no doubt that there are many manors in which both lord and tenant are perfectly satisfied with their present rights—with the advantages of possession and alienation which they now enjoy. In these cases we cannot but see the difficulty of legislative interference,—of the hardship to all parties attending a compulsory enfranchisement by commission or otherwise. We might here, in attempting to remedy the grievances attending the present law of copyholds, often unwarrantably alter the rights of individuals, which neither demanded nor required alteration. 3. A third plan is to allow a certain number of the tenants of a manor—say three-fourths—to bind the lord and the rest of the tenants, and to provide a proper tribunal for adjusting the rights of all concerned. This plan is not incompatible with allowing an individual tenant to come to the lord and to obtain enfranchisement on providing for the rights of the lord. This latter course would only be resorted to when the tenant was a considerable holder, and in such cases we would give him the power. A tribunal,

with the proper machinery to undertake and satisfactorily to dispose of enfranchisements, is yet perhaps to be found, and forms the great difficulty of this last plan; but we do not despair of finding one which will have the confidence of the country, and may satisfactorily adjust these matters. We think, therefore, that the last plan is the best.

We are perfectly satisfied that giving additional facilities to enfranchisement *only* will be attended with little advantages. The voluntary scheme will, we think, induce very few persons to enfranchise, if the compulsory scheme be not, at any rate, in prospect. We sincerely hope, therefore, that the Select Committee now sitting on this subject will so remodel the Bill for Enfranchising Copyholds as to render it an efficient measure, in which, we think, they would be supported by the great mass of the public and the profession.

Immediately following we subjoin an analysis of the second of the Copyhold Bills, which is also of much importance.

NEW BILLS IN PARLIAMENT.

COPYHOLDS IMPROVEMENT.

This is entitled "A Bill for the Amendment of the Law relating to Lands held by Copy of Court Roll." The proposed enactments are as follows:

1. Meaning of certain words and expressions: "Manor," "Lands," "Lord," "Steward," "Deputy Steward," "Person," Number, Gender.

2. Power after the 31st December 1838, to lords of manors or their stewards to hold customary courts, although no copyhold tenant be present.

3. After the 31st December 1838, surrenders of lands held by copy of court roll shall be made by instruments in writing, signed by the person making the surrender.

4. After the passing of this act, bailiffs and copyholders are not to accept surrenders of lands held by copy of court roll.

5. Surrenders and admissions, &c. already made of lands held by copy of court roll to be forthwith entered on the court rolls.

6. Surrenders &c. hereafter made of lands held by copy of court roll, &c. to be forthwith entered on the court rolls.

7. Lords and their stewards to grant admissions out of court &c. on being required, &c.

8. It shall not be essential to the validity of a surrender, &c. that it be presented at a court.

9. Lords or their stewards shall deliver to persons notice of all prior surrenders not previously entered on the court rolls.

10. Surrenders &c. by tenants in tail of

lands held by copy of court roll to be valid under 3 & 4 W. 4, c. 74, notwithstanding they are not entered on the court rolls within six calendar months.

11. When surrenders by tenants in tail of lands held by copy of court roll shall take effect under the 3 & 4 W. 4, c. 74.

12. Protectors of settlements under the 3 & 4 W. 4, c. 74, may give their consents to dispositions by tenants in tail under that act in instruments of surrender under this act.

13. Lords of manors, &c. to indorse on instruments of surrender, &c. of lands held by copy of court roll the day, &c. of their being delivered to them.

14. Lords and stewards to be entitled to the same fines and fees on instruments of surrenders &c. under this act as on surrenders at general courts.

15. Entries on court rolls pursuant to this act to be deemed to be entries of transactions at courts, &c.

16. The directions in this act respecting the fees, &c., to which stewards are to be entitled are not to interfere with any orders of the Court of Common Pleas, pursuant to the 3 & 4 W. 4, c. 74.

17. Lands held by copy of court roll, which are severed from the manor, may be aliened as if freehold.

18. Every lease of lands held by copy of court roll granted without a license by the lord, shall be as valid as if granted with such license.

19. A lease rendered valid by this act shall not continue in force after the lord shall become entitled to possession.

20. This act shall not render valid any lease already granted, if the lord shall have entered for the forfeiture incurred by such lease, and shall not prejudice any proceedings now pending.

21. Fines to lords in respect of lands comprised in leases rendered valid by this act granted for building purposes, not to exceed twice the yearly rent reserved in such lease; but, as in all other cases of lands the leases of which are rendered valid by this act, the lord to be entitled to the usual fines, &c.

22. This act shall not apply to any lease where a license by the lord is not requisite.

23. After the 31st December, 1838, all customs relating to curtesy and dower, or freebench in lands held by copy of court roll, shall determine, except in copyhold for lives where there is not a perpetual right of renewal.

24. Widows of husbands dying after the 31st December, 1838, shall be entitled to dower out of copyholds of inheritance, where if freehold, they would be entitled to dower therein.

25. Widows of husbands dying after the 31st December, 1838, and seized of the whole estate in copyholds for lives where there is a perpetual right of renewal, shall be entitled to dower thereout.

26. The dower of widows in lands under this act to be one-third of such lands for their lives, and all the laws relating to dower out of lands held in free and common socage shall,

mutatis mutandis, apply to dower, to which a widow shall be entitled under this act.

27. This act not to extend to the dower of any widow who shall have been married before the 1st of January, 1839.

28. Husbands of women dying after the 31st December, 1828, to be entitled as tenants by the curtesy to the entirety of all copyhold lands held by them, in right of their wives, for interests which, if such lands were freehold, would have entitled them to be tenants by the curtesy.

29. Husbands married on or before the 1st of January, 1839, not to be entitled to curtesy under this act.

30. All the provisions of this act applicable to lands held by copy of court roll shall apply to customary freeholds and tenant-right estates where the freehold is in the lord.

NOTICES OF NEW BOOKS.

Remarks on the Report from a Select Committee of the late House of Commons, on the publication of printed papers. Second Edition. By P. A. Pickering, M. A., of the Inner Temple. London: Saunders and Benning, 1838.

OUR readers are aware of the great question before the Court of Queen's Bench, relating to the privilege of the House of Commons, in regard to the publication of printed papers,—not for the use of the members of the house only, but for public sale, although such papers should contain libellous matter in regard to individuals. Amongst the ablest pamphlets on this subject is that of Mr. Pemberton, in "a Letter addressed to Lord Langdale, on the recent proceedings in the House of Commons on the subject of Privilege;" and we have now before us a work by Mr. P. A. Pickering, the special pleader,—of the merits of which Mr. Pemberton in his second edition thus speaks:—"A very valuable work has just been published entitled '*Remarks on a Report of a Select Committee of the late House of Commons, on the publication of printed papers*,' in which the questions discussed in the following pages are treated with very great learning and ability."—After this high authority, it is unnecessary for us to offer any other opinion than that whoever desires to be put in possession of all the materials for forming a correct judgment of the points in question, will here find them clearly stated, the authorities methodically arranged, and the questions ably argued. We think it due to the present author to extract some of the principal topics on which he

has treated; but shall first state the several points comprised in the work: they are,

I. Whether the public have a right to be informed of the proceedings of parliament.

—II. Whether the privilege now claimed by the House of Commons is necessary for the due performance of their legislative duties.

—III. Whether such a privilege is sanctioned by the custom and practice of parliament.

—IV. Whether such a privilege is at all sanctioned by the *Bill of Rights*—V.

Whether such a privilege is in any way affected by the decision of the Court in

Rex v. Wright, and in what estimation, the principle laid down in that case has been

held by subsequent judges.—VI. Whether it is expedient that such a privilege should

exist.—VII. Whether the orders and resolutions of the House of Commons have

been held to be binding on the Courts of Westminster Hall, and whether those Courts

have judicial knowledge and cognizance of the privileges of parliament.—VIII. What

the nature of those cases has been where the question of privilege has been held to

arise directly, and the Courts at Westminster to have no jurisdiction to decide upon

it.—IX. Whether in those cases the principle laid down by the Courts at Westminster is consistent with constitutional justice

and liberty.

The general question Mr. Pickering thus states:

"The House claim the privilege of publishing what they please to the world, not only as essential to the due discharge of their parliamentary functions and as sanctioned by the uniform custom and practice of parliament, but also as positively established and confirmed by an express statute; and even, if the decisions of the Courts of Westminster Hall be of any weight in this matter, as upheld by the decisions of those very Courts themselves. They assert, therefore, that not only is this their undoubted privilege, but that whether it be or no, the Courts of Westminster Hall have no power to dispute their assertion or practice of it. The grounds, therefore, for supporting the resolution of the late House of Commons to adopt this report, were apparently many and various. Some of the members attached most importance to the custom of parliament; some to its power, which they deemed necessary for the performance of its duties, or at least for the support of its dignity; while others, and perhaps the greater number, considered the *Bill of Rights* conclusive upon the subject."

The author then proceeds to consider the various grounds for supporting the privilege in question,—1. on the supposed right of the public to information, he says,

"This right of the public, so far from ever

having been acknowledged by the House, has always been most steadily and uniformly denied. The sole right which the constituents possess and exercise is that of electing their representatives in parliament, and when once they have exercised that right, their representatives are to fulfil the high trust which is reposed in them unfettered by the limited notions and feelings of any particular body of men. The constituents judge generally of the character and public conduct of their representatives. They can see whether they have performed their political duties with an honest activity and independent zeal; but upon the principles on which any measure may be founded, or upon the policy which any government or party may pursue, they have neither sufficient leisure nor experience to decide. To assert the right of the constituents to be made acquainted with the minor details which may be necessary to enable a legislator to propose or adopt any particular measure, would be to degrade the members of parliament into mere agents and delegates; and what confidence could be reposed in any public men, whose understandings were fettered and their consciences debased by an avowed servility? The whole course and practice of parliament confirm this observation. No man can publish the debates in parliament to the world without the express or tacit permission of the House. The very publication is a breach of the privilege of parliament. Nay, the very presence of strangers at the debate is entirely a matter of limited grace and favour, on the part of members to grant, and not of right on the part of the constituents to demand."

He next combats the position that such publication is necessary for "the proper exercise of the functions of the House." Over this part of the case we pass, as not sufficiently of a legal bearing, and come to the Third and main point, whether the privilege be sufficiently sanctioned by uniform custom and practice. Mr. Pickering here observes that,

"The evidence which has thus been collected and adduced by the committee divides itself into two distinct parts; that which relates to what are termed the *votes and proceedings* on the one hand, and that which relates to the reports and miscellaneous parliamentary papers on the other. It will readily be seen that not only have different printers been appointed, the one for the votes and proceedings, and the other for the reports and parliamentary papers; not only is a general resolution found for printing the votes and proceedings, and merely specific or limited occasional resolutions with regard to the reports and parliamentary papers; but that the whole course and practice of parliament with respect to the vote and proceedings on the one hand, and the reports and parliamentary papers on the other, has been throughout, from the earliest period that can be traced in the records of parliament, altogether different."

After treating on this point somewhat further, he adds:

"The committee state that the earliest entry contained in the journals of the House relating to the printing of any parliamentary papers, is on the 30th July, 1641, when the House adopted certain resolutions, and ordered them to be printed." The form of the entry is, "that these *Votes* be printed and attested under the clerk's hand." This is indeed an ominous commencement of even the custom we are now considering. It began, as the committee themselves allow, with the parliament that abolished both monarchy and peerage. They add that, "in 1680, a general resolution was adopted for printing the *votes and proceedings*, and from that year such general order has been renewed every session, and a printer appointed for the purpose by the speaker, which practice has continued unto the present time." That "the only exception to the continuance of this practice was in the year 1702, when the general order for printing the *votes and proceedings* was for a very short time suspended." It is curious after reading this section, in which at least one interruption to the printing the *votes and proceedings* is allowed to have taken place since its commencement, to find it stated in the 20th section, "That the sale of the *votes and proceedings* of the House by the printer appears to have continued without interruption from its first commencement." And it is still more curious to turn to the Appendix which is referred to in support of this assertion, and find it there stated, "That in 1688 two motions for printing the votes were negatived." So that it appears that not only is the body of the Report inconsistent with itself, but that the very Appendix which is appealed to in support of it is found to contradict it.

From this, the writer proceeds to examine the evidence which relates to the *Reports and Miscellaneous Parliamentary Papers*. This is the most essential part of the controversy.

"The committee have frequently used the word "papers" to signify as well those which contained the votes and proceedings of the House, as also others which contained matter of a different nature. It is of course only necessary now to notice that part of the Report and the Appendix, where that word is used in the latter sense. The committee state that, "from 1641 to 1680, there are various resolutions for the printing of specific votes and papers;" and in the following section, speaking of the time subsequent to 1680, that "reports and miscellaneous parliamentary papers have been from time to time printed under distinct orders of the House." And with

^a Rep. s. 9.

^b App. A. p. 19.

^c App. 3, p. 74.

^d Rep. s. 11.

^e Rep. s. 12.

^f Rep. s. 10.

reference to the fact of publication they state ~~that from 1641, till past the middle of the last~~ century, many of the papers printed by order of the House purport, upon the face of them, to be printed and published "by order," with the name of the clerk of the House attached, and they usually had the appointment and prohibition of the speaker with regard to printing set out at the back of the title page, sometimes with the note at the foot of the paper, "that the same was sold at, &c."—the establishment of the printer appointed. These papers being printed for and by the order of the House, must have been constantly under its view, and the sale notorious, though no express order for it is to be found in the journals." To substantiate this statement, the evidence on which it is founded is referred to as contained in Appendix No. 3; which it is therefore necessary now to consider. We find it allowed by the committee, that the first parliament which ever ordered publications of this nature was the long parliament. This simple fact, it might have been naturally supposed, would have alone induced any one to look with suspicion upon a privilege, which, as far as the utmost research can discover, was first called into existence at such a period. But no suspicion of this kind seems to have entered into the minds of the committee. They have collected the numerous papers which were published by the long parliament, and unscrupulously put them forth in this Appendix as precedents by which the present claim of the House of Commons can be supported. Other statesmen and writers, who either for a political or historical purpose, have had occasion to examine the practice of parliament, have at once felt the worthlessness of such precedents, and studiously avoided them. Lord Hale, in speaking of that period says, "It would be too hard a task for any person to justify all proceedings of that time to be consistent to the ancient and regular proceedings of parliament." Of the same opinion, too, were Lord Chancellor Nottingham and Mr. Hargrave.^k Junius, in one of his letters says, "The truth is, that the greatest and most exceptionable part of the privileges now contended for, were introduced and asserted by a House of Commons which abolished both monarchy and peerage." "In the long parliament," writes Mr. Hallam,^m "even from its commencement every boundary was swept away; it was sufficient to have displeased the majority by act or word; but no precedents can be derived from a crisis of force struggling against force."

Mr. Pickering enters into many details in support of his argument on this part of the case, and then adds,

"It will be seen from the papers I have mentioned that there have only been occasional orders made by the House for the publication of papers, and that the last of these papers which, even in the opinion of the committee, has any indication of a sale, occurs in 1771, since which time even these occasional orders for publication have been discontinued. As far as it is possible to judge of the character of these papers, it is difficult to imagine that any thing of a defamatory nature could be contained in them; but even supposing that all did contain defamatory matter, it will add but little to the argument of the advocates of this claim. For if there be no precedents beyond those which I have mentioned, it seems that the practice of ordering publications of this nature was neither very ancient, nor very frequent, nor very unquestioned. If indeed such a practice existed at all, it rested upon the ground of reason or necessity; it was supported by fewer precedents than can be urged in favour of any privileges now possessed by the House; it had received no legislative sanction, and was recognised by no judgment of the Courts at Westminster; and like the power once exercised by the House of fining for contempt, appears to have been altogether discontinued. The presumption, however is, that there was nothing in these papers of a defamatory nature. For the fact that the orders for their publication were only made upon particular occasions, would indeed support the supposition that the House had felt the propriety and necessity of being very careful in the selection they made of them for the public view."

The fourth argument to which Mr. Pickering adverts, is drawn from the Bill of Rights, the ninth article of which runs thus:

"That the freedom of speech, and debates, and proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament." It is admitted, as of course it must be, that this article, taken singly and by itself, has no reference whatever to the case in question. It merely secures to the members in their speech, debates, and proceedings in parliament that freedom, without which no legislative duty could be adequately performed. This is the interpretation, and naturally the only one, which any legal or political writer has ever attempted to put upon it. Sir W. Blackstoneⁿ mentions it only to shew that privilege of speech is thus secured to parliament, and De Lolme^o quotes it for the same purpose."

Having argued this point at some length, the author proceeds, fifthly, to the consideration of the decision of the Court in *Rex v. Wright*, (8 T. R. 293). But in that case, he remarks,

^k Rep. s. 19.

^h Rep. p. 71.

ⁱ Hale's Jurisd. of H. of Lds. p. 194.

^k Hargrave's Pref. to Hale's Jurisd.

^l Junius' Letter, 48.

^m Const. Hist vol. 3, p. 370.

ⁿ Blackstone's Comm. vol. 1, p. 164.

^o De Lolme on the Constitution, p. 97.

"The publication was without any order or authority of the House, so that any power on the part of the House to order publications of this nature formed no subject of consideration to the Court. There have been some persons, who have imagined that if the publication of a proceeding in Parliament, without the authority of the House, be justifiable, *à fortiori* must such a publication be so, when it has taken place by the authority of the House. To argue thus however, is in fact, to beg the main question now at issue; for it must first be shewn that the House of Commons were entitled to make any such order (which is the very thing that is the matter of dispute), before the argument can be considered in any way *à fortiori*. For though it be a breach of the known privileges of the House to publish their proceedings without their permission, yet of that the Courts of Law can take no notice, as the House can alone judge what is a breach of their known privilege, and punish the violation of it."

Mr. Pickering then proceeds to shew that many eminent and learned judges have very materially qualified the doctrine laid down in *Curry v. Walter*, 1 B. & P. 525, by which the case of *Rex v. Wright*, was altogether governed.

"In *Stiles v. Nokes*, A. D. 1806, Lord *Ellenborough* and *Grose*, J. observed, 'that it must not be taken for granted that the publication of every matter which passes in a court of justice, however truly represented, is, under all circumstances, and with whatever motive published, justifiable; but that doctrine must be taken with grains of allowance.' 'It often happens,' said Lord *Ellenborough*, 'that circumstances necessary for the sake of public justice to be disclosed by a witness in a judicial inquiry, are very distressing to the feelings of individuals on whom they reflect, and if such circumstances were afterwards wantonly published, I should hesitate to say, that such unnecessary publication was not libellous, merely because the matter had been given in evidence in a court of justice.' Next came the case of *The King v. Creevey*, Esq. M. P. A. D. 1813. In this case, a Member of the House of Commons had been convicted upon an indictment for a libel, in publishing in a newspaper the report of a speech delivered by him in that House. On motion for a new trial, a rule to show cause was refused; and Lord *Ellenborough* said, "As I cannot find any thing on which to found even a colour for argument, except what arises from an extravagant construction put on a particular expression of Lord *Kenyon*, in the case of *Rex v. Wright*, it would be to excite doubts, and not to settle them, if we were to grant the rule. What Lord *Kenyon* there said was this, 'That it was impossible to admit that the proceedings of either of the Houses of Parliament was a libel, and yet that was to be taken as the foundation

of the application made in that case.' I will not here wait to consider, whether that could be strictly called a proceeding in Parliament. What was printed for the use of Members was certainly a privileged publication; but I am not prepared to say, that to circulate a copy of that which was published for the use of the Members, if it contained matter of an injurious tendency to the character of an individual, was legitimate, and could not be made the ground of prosecution. I should hesitate to pronounce it a proceeding in Parliament in the terms given to some of the Judges in that case." And upon the case of *Curry v. Walter*, his Lordship remarked, 'As to *Curry v. Walter*, it is not necessary for the present purpose to discuss that case: whenever it becomes necessary, I shall say that the doctrine there laid down must be understood with very great limitations, and shall never fully assent to the unqualified terms attributed in the report of that case to *Eyre, C. J.*' And his Lordship ended with saying, that 'the case of *Rex v. Creevey* was not within the case of *Rex v. Wright*, giving to that case its fullest effect, and that even if it were, perhaps the Court would lay down the doctrine with somewhat more limitation than is to be found in that case.' On the same occasion, Mr. Justice *Bryley* said, 'It has been argued that the proceedings of a court of justice are open to publication. I enter my protest. Suppose an indictment for blasphemy, or a trial where indecent evidence was necessarily introduced, would every one be at liberty to publish the minds of the public by circulating that which, for the purposes of justice, the Court is bound to hear? I should think not; and it is not true, therefore, that in all instances the proceedings of a court of justice may be published.' And the learned Judge made similar observations with reference to the publication of the speeches of counsel. In 1819, occurred the case of the *King v. Mary Carlisle*. A rule had been obtained against the defendant for publishing a libel, entitled 'The Mock Trial of Mr. Carlisle.' It, however, contained a true and correct account of what took place at the trial at Guildhall. In the course of that trial, Mr. Carlisle had read over to the jury the whole of 'Paine's Age of Reason,' which was the book, for the publication of which he was indicted, and he accompanied it by arguments and statements of a most blasphemous and indecent description, the whole of which, together with the book, were republished by the present defendant (the wife of Mr. Carlisle) as a part of the trial. On cause shewn, *Abbott, C. J.* said, 'There can be no doubt in the mind of the Court, or of any person acquainted with the law of the country, that, if, in the course of a trial, it becomes necessary, for the purposes of justice, that matter of a defamatory nature, should be publicly read, it does not, therefore, follow that it is competent to any person, under the pretence of publishing that

trial, to re-utter that defamatory matter. The law I take to be most perfectly clear, and, therefore, this rule must be made absolute." Mr. J. Bayley said, "I remember perfectly the case of *Rea v. Greedy*, and I remember perfectly, that the case of *Curry v. Walter*, which has been referred to, was then under the consideration of this Court, and Lord Ellenborough, in very strong and expressive words, stated, that the case must be taken with considerable qualifications, and that, whenever it should distinctly come under consideration, he should intimate what his opinion upon that decision was. And the opinion delivered by me then was to the same effect, and was one which I have entertained for a very long series of years." Mr. J. Best also said, "I think it right, on this occasion, to express my opinion of the case of *Curry v. Walter*; I think it is certainly lawful to publish proceedings of courts of justice, but, when I say that, it must be taken with this qualification, that what is contained in the publication must be neither defamatory of an individual, tending to excite disaffection, nor calculated to offend the morals of the people; for if it contains that which is calculated to produce any of those effects, instead of disseminating useful knowledge, it will produce great mischief. When I say, therefore, that the proceedings in courts of justice may be published, I do not give my sanction to the authority of the case of *Curry v. Walter*, without imposing these conditions." Similar remarks too were made by the Judges, especially by Mr. J. Bayley, in the case of *Lewis v. Walter*,^a in 1821, and in that of *Flint v. Pike*,^b in 1825."

We have already somewhat exceeded our limits, and can only refer to the remaining points of the discussion, all of which are ably treated, and are well worthy of perusal.

PRACTICAL POINTS OF GENERAL INTEREST.

SAVINGS BANK.

THE following case is an important decision relating to money deposited in Savings Banks:—

"In April, 1818, a savings bank was established at Mildenhall, in Suffolk, under the provisions of the 57 Geo. 3, c. 130. Sir Thomas Banbury, baronet, and other individuals, were appointed trustees, and they were also appointed, in conjunction with several other persons, managers of the bank. By the rules for the management of the affairs, which were duly filed with the clerk of the peace, it was provided that any matter in dispute between the said institution and any person acting under the same, and any depositor therein, and any executor, administrator, or next of kin of any deceased depositor, or any person

claiming to be such executor, administrator, or next of kin, should be referred to the arbitration of two persons, one to be named by the claimant and the other by the managers; and in case the two persons so named should not agree, that they should forthwith nominate an umpire, and the decision and award of such referees and umpire should be final and binding upon both parties. One Gill was appointed clerk to the bank in 1818, and in 1825 he embezzled a large portion of the money deposited in the bank. The depositors claimed the money from the managers. It was agreed among the depositors that the claim of one person only should be prosecuted at a time. Accordingly, in 1832, an action was commenced in the Court of Common Pleas, by one of the depositors named Crisp, against Sir Henry Edward Banbury and others, for money had and received. The Court of Common Pleas decided that the action was not maintainable, *Crisp v. Banbury*, 8 Bing. 394, and that the remedy was by arbitration. In 1835, Brett, another depositor, claimed in his own right, and as executor of his father, about 360*l.*, and obtained a rule nisi for a *mandamus*, requiring the trustees and managers of the bank to appoint an arbitrator. Brett had demanded the money due to him, and had appointed an arbitrator on his part.

Lord Denman, C. J., on this day delivered the judgment of the Court.—This case was argued several terms ago, under very peculiar circumstances, which have led to much doubt and delay. It was a rule for a *mandamus* to the trustees of a savings bank, to appoint an arbitrator for the purpose of deciding a claim preferred against them by a depositor, who had sustained a loss by the default of one of the officers. A depositor in the same bank had brought an action against the same trustees for the consequences of the same default, which was tried some time ago in the Common Pleas, where, however, after argument, and time taken for consideration, that Court directed a nonsuit to be entered, on the ground that no action would lie, but that the remedy must be sought under the arbitration clause. *Crisp v. Banbury*, 8 Bing. 394. The reasoning of the Court to this effect is strong, and we cannot say that they were mistaken, though a high legal authority then at the bar had given an opinion that the party ought to proceed by action. This circumstance has induced us to pause upon the case; but we cannot see any ground for reversing the judgment of the Common Pleas on this point, which is, moreover, one of great practical importance to the whole body of depositors in savings banks throughout the country, little able as they may be supposed to be to bear the expense of legal proceedings, and invited by the act to invest their property where it would be placed under a domestic jurisdiction. Some doubts also occurred to us whether, under the 9th section of the 57 Geo. 3, the trustees could be personally liable to the depositors, and if not, whether we ought to order them to refer to arbitration, a question which it would be illegal

^a 4 Bar. & Ald. 605. ^b 4 Bar. & Cress. 473.

to decide against them. But, we think, that this consideration ought not to prevent our placing the claimant in the position which the act has provided for him. There may be particular facts in his case, which might prevent that clause from attaching, and the result may be, that the bank may be made liable, not the trustees personally. The rule must be absolute.

Rule absolute.—*Rea v. Trustees of Mildenhall Savings Bank*, 2 N. & P. 278.

ON THE MODE OF EXECUTING COUNTRY FIATS.

A PAMPHLET has just been published by Mr. Fisher, of the firm of Fisher and Sudlow, in the shape of "A Letter to the Lord Chancellor on the subject of Lists of Commissioners, and the present mode of executing Fiats in Bankruptcy in the Country." It is written with considerable force:—pointing out, strongly and clearly, the evil complained of, and suggesting a remedy.

The grievance which Mr. Fisher seeks to remove, is thus stated:—

"Formerly country commissioners of bankrupt were directed to *two barristers and three solicitors*, selected by the solicitor to the petitioning creditor; it being requisite that one of the three acting commissioners should be a barrister. In those days, both in town and country, all commissioners, barristers, or solicitors, were entitled to the same fee of 20*s.* a meeting; and we were never started at Guildhall, where the lists consisted of both *barristers and solicitors*, by seeing one or two paid their 40*s.* or 60*s.*, and the third (because he was a solicitor) his 20*s.* only. Times have, however, changed, and by the Bankruptcy Act of 6 G. 4, *two barristers* are to have the *choice and preference* over *attorneys if they think proper to attend*, and are allowed 40*s.* a meeting each, and "may receive a further sum of 20*s.* each for every such meeting, when they travel seven miles or upwards;" thus giving the *two barristers* 3*l.* each, and the solicitor, let him travel as far as he may, his fee of 20*s.* only. The penalty is great against the commissioners. If more fees be taken, or for eating and drinking at the expense of the creditors or the estate: this law as to fees, &c. still remains.

"By the act of 1st and 2d Will. 4th, c. 56, s. 14, it is enacted "That the judges who go the several circuits in England and Wales may be directed by the Lord Chancellor, from time to time, to return to him the names of such number as he shall think fit to require of barristers, solicitors and attorneys, practising in the counties to the said circuits belonging, and upon such persons being returned and approved by the Lord Chancellor, the fiat or fiats aforesaid, not directed to the Court of Bankruptcy, shall be directed to some one or more of such persons in rotation, to act as commissioners of bankruptcy, according to the dis-

tricts or places for which such persons shall be so returned, and to no other person than such as shall be included in such return." Under this provision Lord Brougham, when Chancellor, appointed lists of commissioners for the various counties. For Yorkshire the lists consisted of 53 persons divided into six lists—a tenth list has been since added, I believe, by your Lordship—so that for the whole county there are now 47 commissioners only, distributed in lists at Doncaster, Hull, Halifax, Leeds, Whiby, Northallerton, York, Sheffield, and Settle.

"The county of York contains about a million and a half of inhabitants, and extends from east to west upwards of 100 miles, and from north to south about 60. There are 72 market towns, and near 800 practising attorneys and solicitors in the county, besides resident barristers. I subjoin a list of the principal towns and number of attorneys therein, as well as a copy of the lists of the present commissioners.

"If your Lordship will do me the favour to look at the map of Yorkshire, and see how these commissioners are distributed about the county, and consider its vast extent, population, wealth, and commercial importance, you will not be surprised at the fact of loud and continual complaints of inconvenience, hardship, and expense in the working of fiats, and especially from the travelling of commissioners, solicitors, and creditors, which are made almost daily; besides which there is a very great outcry by respectable solicitors, who are now shut out from their fair legal business in bankruptcy business by this system of selection and exclusion.

"The present rule is for the fiat to be directed to the list nearest to the residence of the bankrupt, which is a very great hardship upon the creditor, who ought to have the choice of the place where it should be worked.

"If a merchant in Sheffield sues a debtor in Dorsetshire, he can lay his venue and try his cause at Yorkshire, and why, therefore, should he not have the right of prosecuting a fiat there? Instead of which we have just issued a fiat for a house in Sheffield against a firm at Poole, in Dorsetshire, and the petitioning creditor has come to London and proceeded to Poole to open the fiat, where he is compelled to employ an attorney he never saw; and must repose confidence in a perfect stranger as his solicitor; by this one journey the creditor must lose a week's valuable time, travel there and back, upwards of 600 miles, and incur a great expense, which he never may get repaid. Surely some remedy ought to be supplied for this new mode of bringing justice home to a man's door: an inflexible rule, I believe, of the Court of Review!!! In some cases the rule may be good, but generally, and in such a case in particular as this, it is bad. The creditors are distributed about in the great manufacturing towns of London, Sheffield, and Birmingham, yet they must go into Dorsetshire to have justice administered."

After adducing various instances of equal

grievance to the fact, Mr. Fisher adds the following:—

"About the middle of January last the Halifax list had a meeting fixed at that town for the purpose of opening two fiats, taking the examination of three bankrupts under another fiat, an audit of assignees' accounts, and also a dividend under another fiat. The two commissioners residing at Halifax were at their post, and so was the barrister from Huddersfield, but one of the solicitor commissioners was confined to his bed by illness, and the Bradford commissioner stayed at home. (He makes no scruple in its being understood that he would rather not travel as a commissioner; and so neglect his own business at home, and lose his valuable time and money into the bargain.) The three commissioners so met got on with the business as far as they could, and opened one fiat, and also disposed of the audit and dividend. In the second fiat to be opened, and the one under which the last examination was to be passed, the solicitor commissioner at Halifax happened to be also solicitor under these fiats, and therefore could not act as commissioner and solicitor also. This was unfortunate, as the other Huddersfield commissioner could not attend, and although a special messenger was sent post for the Bradford commissioner to come over to Halifax, he was unwell too; and would not stir from home. The messenger returned from Bradford after a ride of near 20 miles, but brought no commissioner with him. What was to be done? A petitioning creditor hail their travelled more than 20 miles to Halifax by the appointment of his own solicitor, (one of the commissioners too), and the three bankrupts must pass their examination, or it must be adjourned. Late in the day, therefore, as the last resort, the two barristers, solicitor, petitioning creditor, and the witnesses under the fiat to be opened, and the assignees under the other fiat, with the three bankrupts, &c. &c., started off for Huddersfield to attend the sick commissioner there at his bedside, when the fiat was then and there opened, and the last examination adjourned only, (and which of course rendered another meeting necessary). The petitioning creditor had by this time travelled from home about 30 miles, and all the other parties about half as much, and had to go back again, to their no small annoyance and expense, some of them insisting upon inflicting their expenses upon the heads of their own solicitors. For all this trouble and expense the solicitors to the fiats would, of course, get for the loss of their whole day, and that of their clerks, posting to Bradford, Huddersfield, &c. &c., and back, their fee of 20s. each, and thereby sustain a pecuniary loss of some pounds. Having seen the result of this eventful day to the other parties as to loss of time and expense, let us see how the pecuniary affair with the commissioners stands; the two barristers had unavoidably travelled 16 or 17 miles each, one of them, therefore, might receive 15s., and the other 12s., for this day's

business, while one of the two solicitor-commissioners was entitled to 8s., and the other to 2s. These are a few instances only of what happens daily in most counties in England."

"Your Lordship will have seen that my objections to the present system are, 1st, to the exclusion of so many respectable solicitors from what is their just right; 2nd, the degrading and inadequate way in which they are paid as commissioners and solicitors under fiats; and 3rd, the limited number of commissioners causing so much uncalled for inconvenience, trouble, expense, and delay, to commissioners, creditors, solicitors, and the community who are concerned in bankruptcy business, the reverse of all which has most assuredly been the object and intent of the legislature in making and altering the bankrupt laws. Now, as to the mode of remuneration to solicitors and commissioners, I am aware that your Lordship, without the aid of Parliament, can do nothing; but in reference to that subject I may just allude to what is allowed to an attorney and solicitor in other matters. In common law or equity he is allowed two guineas a day for his attention to any particular business, besides 1s. a mile for his travelling expenses. Under Inclosure Acts from two to three guineas a day, and in parliamentary business he may charge five guineas; and also his travelling expenses."

Having thus stated the inconvenience, delay, and expense, in the administration of justice in this large department of the law, Mr. Fisher then proceeds to suggest to the Lord Chancellor the remedy.

"The great grievance, however, is the want, in numbers, of commissioners, from which arises all the complaints of expense and inconvenience, and hence the physical impossibility of the bankruptcy business in the country being done at all as it should be, with cheapness and convenience to all parties. For this you already have the remedy in your own hands. You are not restrained from the appointment of any number of commissioners. If it were necessary you may appoint every barrister and solicitor in England and Wales. Where, therefore, the necessity of imposing the expense and inconvenience of travelling upon any one, and especially the poor creditors, who surely suffer enough by the loss of their debts, abating the scanty dividends usually received? I submit to your Lordship most respectfully, but most firmly, that there ought at once and without delay to be appointed a list of commissioners (if the system is to be continued) at least in every town where there are five respectable attorneys, joining barristers; if you please, (for you are not bound to do, as the last act of Parliament and the Wiltshire Act show); and giving them the preference, and their fees accordingly, if they can attend and are willing to do without the expense of travelling. In large towns there ought to be three or four lists, according to the population of the town and surrounding district, so as to ensure a speedy, convenient, and cheap mode of

administering this part of the bankruptcy business to the best advantage of the creditors, and the necessary acting parties concerned in it. But I have a still better plan, which is also within your Lordship's reach, and I think by far the more preferable.

"The working of London fiats by one commissioner has been tried with success, and is the only part of the new Bankruptcy Court Act which has worked well; all the rest is generally considered a perfect failure. The larger part of business under fiats is of the most formal and ordinary character, and capable of being done by almost any solicitor now in practice, quite as well as by three commissioners, although two may be barristers. If there were barristers sufficient, resident in the country, to do all this sort of business with dispatch and convenience, without any expense of travelling, I would advise your Lordship at once to adopt the plan of directing the fiats to three barristers, or any one of them, letting one only act, unless in matters of great importance, when the three might make a sort of subdivision court, at the instance of the assignees and creditors. This would then put the body of solicitors upon an equal footing, which is one thing most desirable. But as the barristers are not sufficiently numerous, I would direct the country fiats to two barristers and two attorneys, or any two of them, one of the two being a barrister; if he is to be had without travelling, letting two always act, the barrister having a casting vote to avoid the difficulty of not agreeing. Where barristers cannot be found without the expense of travelling, then the two solicitors to act alone, the senior of whom to have a second vote for the purpose before mentioned."

SELECTIONS FROM CORRESPONDENCE.

THE ENSUING EXAMINATIONS.

To the Editor of the Legal Observer.

Sir,

In the last number of your Legal Observer, in a note at the foot of a letter, from "A Solicitor of thirty years' standing," (very justly, in my opinion, complaining of the examination which articulated clerks have to undergo) you state that it is the first time you have heard of the examination being considered too severe. Now the opinion entertained, I may say universally among all branches of the profession, is that the last examination was too severe, both on account of the quantity and quality of the questions expected to be answered. I am not "a solicitor of thirty years' standing," but one of much later date, and consequently more acquainted with the present practice; and I have no hesitation in saying that I think there are few solicitors at this time in actual

practice who could sit down and answer two-thirds of those questions that lately appeared in your publication correctly, without consulting the authorities; and in this I am borne out by the opinions of many gentlemen in extensive practice. There were also many questions calculated only to mislead a young man, who is probably at that time, from nervous excitement, less capable of seeing a point in its proper light, than he would be at any other time. How then is it to be expected that young men coming from the country, where they cannot possibly, nor is it required that they should, obtain a knowledge of London practice, should be able to give correct and technical answers to such a variety of questions, many of them being so indefinite that persons of considerable experience find much difficulty in shaping answers?

I have, therefore, Mr. Editor, troubled you with these few lines for the purpose of suggesting, whether it would not be showing greater fairness to our younger friends if the questions put were fewer in number, and not quite so intricate as they were the last time, until the first five years have expired; because it has the effect of ruining the prospects of many young men not blessed with riches, and who cannot afford the expense of studying at conveyancers' and pleaders' chambers, and are therefore obliged to take situations as clerks in a London office at a small salary, when otherwise they would have become respectable country practitioners. But I think when the first five years have expired it should certainly be much more severe, as young men will then have run into it with their eyes open, and consequently ought to have known whether they could afford to pass a year or two in town, which I conceive to be indispensable to enable them to pass.

AN OLD SUBSCRIBER.

[The misapprehension seems here to be that the rule of Court would be satisfied by putting a few easy questions, which any one of ordinary capacity, with but little study or experience, could answer. This would bring the examination into contempt. The suggestion that fewer questions should be put, ought not to be adopted for the sake of the candidates themselves. The great variety of the questions enables each person to select such as he may be best able to answer. If a few questions only were proposed, then every one of them must be answered; and this test would clearly be far less advantageous to the generality of applicants than the present mode. ED.]

Sir,

I have noticed several letters on the subject of the examination of articulated clerks, and I think that there should be a little caution used before parties suggest a mode of examination different from the present, as they should consider that the Board of Examiners have a very laborious task to perform, and, I feel assured,

* We think our correspondent is mistaken in his opinion, and we have very ample means of collecting information on the subject. ED.

† It is not required that two-thirds of the questions should be answered. ED.

that whilst they will do justice to all the candidates for examination, they possess too high a feeling of honour to do injustice to any. I cannot see why an objection is taken to the present mode of examination. Some of your correspondents say that the questions submitted are difficult, and not fitted for a candidate who has served his articles in the country, and such like; but it is impossible to please all parties; and resting assured that the examiners will not reject a candidate without a cause, I trust that your valuable columns will not be filled again with the suggestions of this or that party on the mode of examination; because it is the duty of the examiners to take care that the questions are answered in such manner as will enable them to certify that the party applying for admission is fit and capable "to act as an attorney and solicitor."

JUSTUS.

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—COPYRIGHT.—DEMURRER.

To a bill stating a case of equitable copyright, and charging piracy thereof, and praying an injunction, a demurrer was put in for want of equity, on the ground that there was not a valid assignment of the copyright, and the want of parties, on the ground that the author was not named as a party. The demurrer for want of parties was held good.

This was a bill for an injunction to restrain the defendant from printing and publishing a book published by the plaintiff, entitled "A Diary, illustrative of the times of George the Fourth, &c." and an injunction was already granted *ex parte*, in the terms of the prayer of the bill. The defendant demurred to the bill for want of equity and want of parties.

Mr. Jacob and Mr. Torriano, in support of the demurrer. The bill stated an agreement in writing, dated 12th July, 1836, between a "certain person," not named, the author of the work, of the first part, and the plaintiff of the second part, by which that certain person, in consideration of a large sum of money to be paid to her, agreed to dispose of to the plaintiff the entire copyright in perpetuity, of an original work, consisting of extracts from a private journal of occurrences, conversations, and anecdotes, kept during the years 1813 and 1814, relative to the late King George the Fourth, the Princess of Wales, and the Princess Charlotte. It then alleged that this certain person in consequence wrote and composed an original work, bearing the title of the "Diary &c." containing original letters of the Princess of Wales and other personages. For the purposes of the suit, those letters must be treated as the compositions of the anonymous author, for, if they were genuine, the plaintiff could not claim a copyright in them.

The bill next stated the delivery of the manuscript and its publication, and the payment of the money, and that a written receipt, dated Nov. 1st. 1836, was given, by which the author acknowledged the receipt of the money as the consideration for the perpetual copyright, and agreed to deliver a regular assignment whenever required. And there was then added an averment, that the sole copyright of the work thus composed and published, was vested in the plaintiff. The demurrer was for want of equity, and want of a party. The plaintiff did not shew that the copyright was vested in him; at the utmost he had only an equitable interest, and the anonymous author in whom the legal right to the copyright was, ought to have been made a party to the suit. This species of property was created by the 8th Anne, c. 19, which secured to authors and their assigns their copyright of a work for fourteen years, and inflicted certain penalties on any other person who should print, within that time, any published book without the consent of the proprietor. The construction of that act was settled in the case of *Power v. Walker*,^a an action for a piracy of the songs in Moore's Melodics, and it was then determined that the assignment by the author of the copyright must be in writing. And in a subsequent case of *Lutorn v. Bland*,^b Chief Justice Abbott thought the assignment ought to have two witnesses. It was therefore clear that an assignment in writing, with two witnesses, was requisite. There were not two witnesses in the present case, and the instrument was not an assignment; it might perhaps be a contract for an assignment, but the book was not composed at the time, and there was therefore no legal copyright to assign when the agreement was made. Besides, it was by no means clear that the published work was the performance of the agreement, which applied to extracts only. The second writing alleged in the bill was a mere receipt, with an agreement for a future assignment, and it contained no words indicating an intention of passing a present interest in the copyright; and if the title of the plaintiff be uncertain, the rule of pleading must apply, that whatever a plaintiff has, without cause assigned, left uncertain, must be intended against him.

Mr. Knight Bruce, and Mr. Sharpe, in support of the bill, observed that the counsel for the defendant had wholly omitted to notice the 54 Geo. 3, c. 156, which clearly dispensed with the necessity of two witnesses. In a case of this kind, against a wrong doer, all presumptions were in favor of the plaintiff. In a similar case of *Morris v. Kelly*,^c Lord Eldon said, "I shall assume that your title is regular, until they show to the contrary." Now there was in this bill a general independent allegation that the copyright was the plaintiff's, and the Court would presume that it was legally

^a 4 Campb. N. P. C. 8.

^b 2 Stark. N. P. C. 382.

^c 1 Jac. & W. 481

in him, by some means or other. But what was meant by the distinction between a legal and an equitable title? There was no difference in such a case as this, which rested in contract; and where there was a contract and a writing, it was immaterial in what form; if the intention of the parties was manifest in the writings, that was sufficient. Upon the same principle, imperfect feoffments were considered as covenants to stand seised, and deeds were held to operate in one case as a release, and in another as a confirmation. The receipt was proof of a complete intention that the thing should pass, and it referred to a regular assignment. This case resembled those where a writing was held to be a lease, although it referred to the future execution of a formal lease.

His Honour The Vice Chancellor.—The bill was defective in not having as a party the author of the work: it was evident the first instrument could not have the effect of an assignment of the copyright, for it could not assign what did not exist. Then came the question, if the first instrument did not operate as an assignment, did the second? It appeared clearly to his mind, that it contained no words of assignment at all. He looked upon the word "regular," as superfluous. Any present assignment would have been sufficient, but the agreement here was an agreement merely to assign when called upon so to do. Now the allegation of right, followed the allegation of printing the work so composed as aforesaid. He must, therefore, read that only in connection with what preceded, and not as a distinct substantive assertion that the plaintiff was the sole owner of the copyright. But the plaintiff had abundant rights in equity against a third party pirating his work. He would allow the demurrer for want of parties, without prejudice to the injunction.

Colburn v. Duncombe, Sittings at Lincoln's Inn, after Hilary Term, 1838.

Queen's Bench Practice Court.

SERVICE OF PROCESS.

Where the Court grants an application that sticking up notice of declaration in the Master's Office may be deemed good service, it will not be made a part of the same rule, that any future rules, &c. may be served in the same manner.

Warren moved, on affidavits, for leave to stick up notice of declaration in the Master's Office, and suggested that the rule might also be granted in the terms of his instructions, namely, that all future notices and rules should be served in the same manner. The case of *Martin v. Colvill*, 2 D. P. C. 624, was, however, a decision that the Court would not grant a prospective rule, but that where other process was required to be served, a fresh application must be made.

Patteson, J. said, that upon the grounds which were stated in the affidavits, notice of declaration might be stuck up in the office;

but the rule could not be granted as to any future proceedings.

Rule accordingly. *Layton v. Mabel*, 1838. Q. B. P. C.

WARRANT OF ATTORNEY.—ATTESTATION.

ATTORNEY.

An attestation to a warrant of attorney in the form "Witness, Henry King, attorney for the defendant, at his request," is sufficient, within the 1 R. G. H. T. 4 W. 4, s. 72.

When a warrant of attorney to confess judgment of a Term is given, it is sufficient, notwithstanding the pleading rules (3 R. G. H. T. 4 W. 4), provided the judgment is signed of a particular day in the Term.

When the attorney for the plaintiff is the attesting attorney, the warrant will be set aside.

Dowling had obtained a rule nisi for setting aside the warrant of attorney given by the defendant in this cause, on the ground of irregularity. He objected first that the declaration of the attorney who acted for the defendant, a prisoner on mesne process, was insufficient, and secondly that the warrant was to confess judgment of a term generally, notwithstanding 3 R. G. H. T. 4 W. 4, which ordered that all judgments should be entered of record of the day of the month and year, whether in term or vacation, when signed, and should not have relation to any other day. The first objection was grounded on 1 R. G. H. T. 4 W. 4, s. 72, which provided that the attorney should subscribe his name as a witness to the due execution of the power, and declare himself to be the attorney of the defendant; and should state that he subscribed as such attorney. The declaration here was "Witness, Henry King, attorney for the defendant, at his request."

Godson now shewed cause, and contended that it was impossible to comply more exactly with the rule; and if any further declaration were required, *Wallace v. Brockley*, 5 D. P. C. 695, shewed that it might be made verbally. The second objection must also fail, because the judgment had been entered up in term time, and was therefore in conformity with the rule of Court. The rule, however, did not interfere with the warrant of attorney, because its object was to regulate the time from which judgment should take effect.

Dowling, *contra*, urged, that the warrant of attorney was not in sufficient compliance with the rule. It was required that "the attorney should declare himself to be the attorney of the defendant, and should state that he subscribed as such attorney," but this direction had not been complied with, for it was quite inconsistent with the declaration that the attorney was the attorney of the plaintiff, but had acted for the defendant in this particular instance, and this idea was supported by the circumstance of the warrant of attorney being directed to King himself. Then with regard to the second point, it must be presumed that the warrant of attorney was to confess such a

judgment as could be confessed according to the rules of the Court. But no such judgment as that proposed in this case would be confessed, because as a judgment would only take effect from the particular day on which it was signed, it could not be signed generally of a Term.

Car. adv. vult.

Pittson, J., subsequently gave judgment, and said that with regard to the first point there were two cases in the Exchequer, *Wilson v. Prior*, 4 D. P. C. 213, and *Robinson v. Brookbank*, ib. p. 395, where it was held that the declaration need not be in writing, and he of course felt himself bound by these decisions; although it was unnecessary to decide that point. But the second objection was that the warrant was to confess judgment of a term generally, and that as such a judgment could not be signed now, the warrant was an authority to sign an irregular judgment. But the utmost limit to which that objection could go, would be that a judgment would not be authorised to be signed in vacation. Here, however, the judgment was signed of a particular day in Hilary Term. This objection to the warrant, therefore, was not a valid one. But there was one, which, if founded on fact, was fatal to the instrument. It appeared to be attested by the plaintiff's attorney, and in *Hutson v. Hutson*, 7 T. R. 7, it was held that the presence of the plaintiff's attorney, although the defendant should consent to his acting for him, was not sufficient. Now in the present case it was clear from the plaintiff's admission, as well as from the defendant's affidavit, that Mr. King was the attorney of the plaintiff. The case, therefore, under these circumstances, clearly came within the decision in *Hutson v. Hutson*; and on that ground the rule must be absolute. His decision, however, proceeded entirely on the last ground, and not on the insufficiency of the attestation, because on that point the cases in the Exchequer were decisive.

Rule absolute.—*Todd v. Gompertz*, H. T. 1838. Q. B. P. C.

Exchequer of Pleas.

TAXATION.—DELIVERY OF BILL.

When the defendant has not appeared, the rule requiring bill of costs to be delivered previously to taxation does not apply.

Slansky shewed cause against a rule obtained by *Wardsworth* for the reviewal of the Master's taxation, on the ground that no bill of costs had been delivered previously to taxation, in accordance with the provisions of the rule of M. T. 1 W. 4, s. 10. It was an action on a bill of exchange, and the defendant had not appeared, and the bill was in consequence referred to the Master to compute principal and interest. An affidavit was now produced, in which it was sworn that the Master stated that the practice of the Court was not to require any notice of taxation, where the defendant had not appeared. There

was, besides, the rule of H. T. 4, W. 4, s. 17, which in terms dispensed with notice of taxation under such circumstances. It was a rule of all the Courts, and must be held to supersede the previous rule of M. T. 1 W. 4. *Pope v. Mann*, 2 M. & W. 881, was also in point.

Wardsworth, in support of the rule, said that in the rule of M. T. 4, W. 4, there was nothing said of the previous rule of M. T. 1 W. 4, which was peculiar to this Court, and it could not be held therefore to affect it.

Purke, B.—That rule applies only to cases where the defendant has appeared, otherwise how can the bill of costs be delivered?

Wardsworth.—The plaintiff had served the defendant with notice of taxation, and had treated the case as if the defendant had appeared.

Parke, B.—The rule of M. T. 1 W. 4, has, by implication taken away the necessity of delivering a bill of costs, if in a case like this, the necessity ever existed.

Rule discharged.—*Birch v. Poynter*, H. T. 1838. Exchq.

PRODUCTION OF DEED.—INTEREST OF PARTIES.

A plaintiff will not be compelled to produce a deed for the inspection of the defendant, in which the latter has no interest.

Wallinger moved for a rule calling on the plaintiff to shew cause why he should not produce a certain deed in his possession, in order that the defendant might inspect it, and take a copy of it. The deed, it was alleged was necessary for the defence intended to be set up, which was that the defendant was liable in the action as surety only, and that time had been given to the principal. The deed was executed by the plaintiff, but the defendant was no party to it. He cited *Baleman v. Phillips*, 4 Taunt. 157, where, although the plaintiff was not a party to an unstamped agreement in the possession of the defendant, the latter was compelled to produce it.

Parke, B.—The only case in which an application like the present is granted, is where a party holds a deed as surety for another.

Gurney, B.—You should give the plaintiff notice to produce the deed, and in the event of his neglecting to do so, you would be permitted to give secondary evidence of its contents.

Wallinger.—In *Browning v. Aylwin*, 7 B. & C. 204, the defendant being a sworn broker of the city of London, an action was brought against him for negligence in making a contract, and he was compelled on motion to produce his books, in order that the plaintiff might take a copy of the contract.

Parke, B.—There is a very evident distinction between that case and the present. In the case cited the defendant acted as agent for both parties; but here the defendant has no interest at all in the deed. If no other evidence can be obtained, the defendant must file a bill of discovery.

Rule refused.—*Smith and another v. Winter*, H. T. 1838. Exchq.

PLEADING SEVERAL MATTERS.—STATUTE OF FRAUDS.

The defendant cannot in an action for not accepting railway shares, plead two pleas of the statute of frauds, namely, that the contract was for goods, and that there was no note in writing, and that it was a contract for an interest in land, and there was no note in writing.

Hoggins moved for leave to plead several matters. It was an action for not accepting railway shares; the railway company had been incorporated by act of parliament, but the sale alleged took place before the act was passed. The pleas proposed to be pleaded, were first, the general issue, and then two pleas of the statute of frauds;—that the contract was for goods, and that there was no note in writing, and that the contract was for an interest in land, and there was no note in writing.

The Court said that the defendant could be allowed to plead only one plea of the statute of frauds; and there could be no difficulty in framing such a plea as would meet both points.

Rule accordingly.—*Sykes v. Reeves*, H. T. 1838. Exchq.

EJECTMENT.—LUNATIC TENANT.

Where the tenant in possession is a lunatic, and his daughter is carrying on business on the premises in respect of which ejectment is brought, judgment against the casual ejector cannot be signed on service on the daughter,—the tenant being confined away from the premises.

Francillon moved for judgment against the casual ejector. The service which had been effected, was on the daughter of the tenant on the premises, where she carried on her father's business, he being a lunatic, and confined in a mad-house.

Patterson, J., thought the service, which might have been effected on the lunatic himself, insufficient.

Rule refused.—*Doe d. Brown v. Roe*, H. T. 1838.—K. B. P. C.

DECLARATION IN EJECTMENT.—OMISSION OF QUO MINUS.

In a declaration in ejectment, the omission of the quo minus is immaterial.

Kelly moved for a rule to set aside the service of a declaration in ejectment. The objection was, that although the declaration commenced by alleging that Richard Roe was attached to answer John Doe, there was no subsequent statement of his being "indebted to our Lady the Queen," and the "quo minus" at the conclusion was omitted.

Parke, B.—An impossible title may be rejected, provided the notice is sufficient.

Per Curiam.—In fact Richard Roe is neither summoned nor attached, and it is not true that he is indebted to the Queen. Mr.

Darby Bayley stated in this Court, that the strict form of the declaration might be dispensed with, provided the notice contained sufficient information. The omission here is of no importance.

Rule refused.—*Doe, d. Blenheim v. Roe*, H. T. 1838. Excheq.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.

[In Select Committee.]

For regulating Charities. Lord Brougham.
[This bill stands for second reading.]

For Exchanging Lands in Common Fields. Lord Ellenborough.

[In Committee.]

To remove doubts as to the validity of oaths, and to substitute affirmations. Lord Denman.
[This bill waits for second reading.]

For the further relief of Quakers, Moravians, and Separatists.

[This bill has passed.]

For Indemnifying Persons who have not qualified, and relieving Attorneys.
[In Committee.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the improvement of County Courts of Civil and Criminal Jurisdiction.

Lord John Russell.

[Leave has been given to bring in this bill.]

To provide for the access of Parents, living apart from each other, to Children of tender age. Mr. Serjt. Talford.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talford.

[This bill stands for 2d reading April 25.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions. Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy. Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts. Colonel Scoble.

To make better provision for collecting, and distributing the estates of persons found bankrupt under Commissions and Fiats directed to County Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Warkley.

[This bill stands for second reading.]

For the Recovery of Small Debts in the Borough of Marylebone.

Lord Teignmouth.

[For second reading.]

To provide for international Copyright.

Mr. P. Thomson.

To regulate the office of Sheriff, and diminish the expenses.

Col. Davies.

[This bill stands for second reading.]

For the better Regulation of the Thames Watermen.

[For second reading.]

For indemnifying persons who have not qualified by taking the Oaths, and for the Relief of Attorneys.

[Passed.]

LAW OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

[These three bills are referred to a Select Committee. For a list of the names see p. 384, ante.]

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases.

The Attorney General.

[These two bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To amend the 6 & 7 W. 4, for facilitating the Inclosure of Open and Arable Fields in England and Wales.

Lord Worsley.

[This bill has been withdrawn.]

To render the Owners of Small Tenements

liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

For the further Relief of Quakers, Moravians, and Separatists. The Solicitor General.

[This bill has passed the Commons.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel.

Mr. O'Connell.

For the suppression of Trading on Sunday.

Mr. Plumptre.

[This bill is in committee.]

LAW OF PARLIAMENTARY ELECTIONS.

To prevent threats to voters, or attempts at intimidation.

Mr. Stanley.

[This bill stands for second reading.]

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament.

Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill is in committee.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

[In Committee.]

Mr. Warburton.

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

[For second reading.] Mr. Hume.

ON THE MODE OF PASSING SMALL DEBT BILLS.

We think the attention of the Profession should be called to the objectionable mode of passing various bills for establishing Courts for the recovery of Small Debts. There are many of these measures now before the Houses of Parliament. Amongst them is one for Ashby-de-la-Zouch, the jurisdiction of which is intended to comprise various places in Leicestershire, Derbyshire, Warwickshire, and Staffordshire, and the amount which may be recovered is to extend to 15*l*. There are also bills before the House of Commons for the boroughs of *Finsbury*, and *Marylebone*, and for *Blackheath*. They are brought in as private bills, and copies cannot be obtained of the printers for the House, like other bills, but must be procured as a matter of favour from the solicitors or agents concerned in supporting them.

It may be very proper for such bills to be brought in at the instance of the inhabitants of the several places to which the bills relate; but it should be recollected, that the public at large have an important interest in such matters: it may be very convenient for the inhabitants to be sued only in their own local court at a trifling expense; but it is not so clearly to the advantage of creditors living at a distance, to travel from their homes and send witnesses to all the districts in which their debtors reside. When the sum exceeds 5*l*. there should be a concurrent jurisdiction in the Superior Courts; and at all events, these bills for the alteration of the law should be treated as public bills, so that the provisions they contain may be known. In the Ashby-de-la-Zouch (or rather the *Midland Counties*) Bill, a new kind of tribunal is to be established. Up to 5*l*., justice is to be administered in the usual form, by commissioners sitting as a jury; but on claims from 5*l*. to 15*l*. a barrister is to preside solely. This is quite a novel plan, and should be well considered before it is allowed to form a precedent.

THE EDITOR'S LETTER BOX.

A Correspondent observes that "By 22 G. 2, c. 46, as 3, 5, an affidavit of execution of articles of clerkship, &c., must be made and filed with the *secondary* or his clerk within three months; and by 34 G. 3, c. 14, s. 2, within six months, the articles must be enrolled with the officer appointed for that purpose (the Master I presume,) together with an affidavit of the execution. Is this latter affidavit an additional requisite, or is the one made and left at the Master's sufficient? In fact, the secondary being placed in Schedule (A.)

of 1 Vic. c. 30, I could find no one to take a second affidavit, but the Master and clerk tell me they want no further one. Certainly each of the above mentioned acts seem to require an affidavit of the same form (but for different officers to file. The officer, (formerly called the Secondary, (that is, the deputy of the chief clerk,) has, in modern times, been styled the Master. The office of chief clerk was abolished by 1 Vic. c. 30. On the passing of that act, we gave an account (14 L. G. 216,) of the ancient officers and their duties, amongst which will be found the "secondary," whose office, *inter alia*, it was, to tax costs, report on references to him, swear attorneys in open Court, and enrol their admissions, nominate special juries, &c.—all of which, as our readers know, belong to the department of the Master. The affidavit filed with the Master by our correspondent is clearly sufficient; he is the proper officer.

We are informed that Sir John Dutton Colt, Baronet, is the Sheriff for Radnorshire; James Thomas Woodhouse, of Leominster (Herefordshire), Esq., is the Under-Sheriff; Cecil Parsons, of Presteign, Esq., Deputy Sheriff; and Mr. Archibald Rosser, 4, New Boswell Court, Lincoln's Inn, Agent.

A correspondent asks "whether the churchwardens of a parish have *veritate officii*, the custody of the title deeds of the advowson, which are kept in a chest in the vestry of the church?"

The Letter of N. will be inserted in an early Number.

"An Articled Clerk" is informed that the second edition of the *Articled Clerk's Manual* contains the questions which were put at all the examinations which had taken place at the time of the publication of that work, and that the subsequent questions have been published in *The Legal Observer*.

We beg again to remind some of our correspondents that the postage of their letters should be paid. This is an ancient rule, from which it is not expedient to depart: we regret that several letters must, therefore, remain unnoticed.

We are ready to consider any reasonably disputed points, and to find room for their discussion within due bounds, but are sure that our correspondents will find the advantage of some previous investigation, before their doubts are submitted to the notice of the profession.

Erratum.—p. 396-7.—*The Queen, Ex parte Harvey, v. The Lords of the Treasury*.—The last five lines of the second column of p. 396 should be transposed to the bottom of the first column of p. 397.

The Legal Observer.

MONTHLY RECORD FOR MARCH, 1838.

—“Quod magis ad nos
Pertinet, et necesse malum est, agitamus.”

HORAT.

LECTURE ON THE WORKS OF LORD BACON,
DELIVERED AT THE INCORPORATED LAW SOCIETY,
By BASIL MONTAGU, Esq., Q. C.

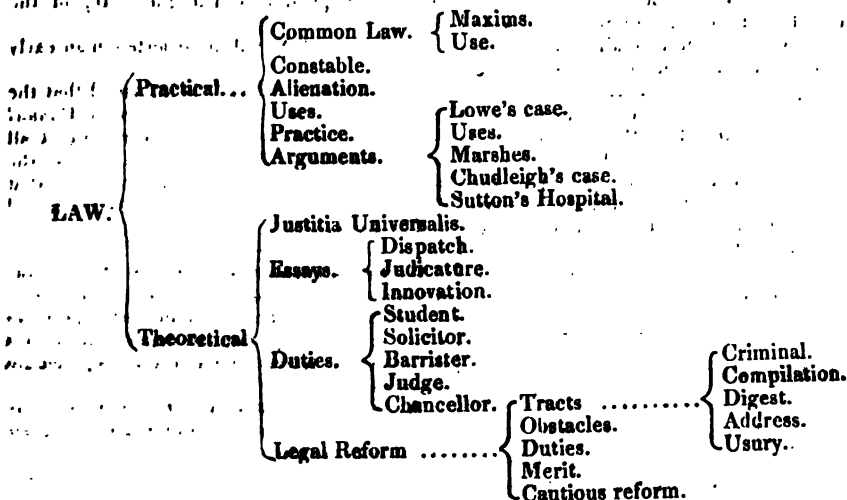
I propose to submit to your consideration :

First—A general view of the *Advancement of Learning*, which contains the celebrated tract upon “*Universal Justice*,” *Leges Legum, the Laws of Laws*.

Secondly—A general view of the *Novum Organum*, which is a work upon the *Conduct*

of the *Understanding* in the detection of error, and the discovery of *truth*, and is the foundation of all wise reform, of science in general, and of the sciences of law in particular.

Thirdly—An examination of his different legal works, which may be thus exhibited:—



I will proceed first to the Advancement of Learning:—

The Advancement of Learning professes to be a survey of the then existing knowledge, with a designation of the parts of science which were unexplored; the cultivated parts of the intellectual world and the deserts; a finished picture, with an outline of what was untouched.

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Within the outline is included the whole of science.

After having examined the *objections* to learning;—the *advantages* of learning;—the *places* of learning or universities;—the *books* of learning or libraries;—“the shrines where all the relics of the ancient saints, full of true virtue, and that without delusion or imposture, are preserved and reposed.”

After having thus cleared the way, and, as it were "made silence, to have the true nature of learning better heard and understood," he investigates all knowledge:—

1st. Relating to the Memory, or History.

- | | | | |
|----------------------------|-----------------|--------------------------|---------------|
| I. Excellence of Learning. | I. Objections. | I. Divines. | I. Fortunes. |
| | | II. Politicians. | |
| | II. Advantages. | III. Errors of Scholars. | III. Studies. |
| | | I. Divine. | |
| | II. Human. | | |
| II. Act and Agenda. | I. Preliminary. | I. Books. | I. General. |
| | | II. Libraries. | |
| | | III. Universities. | |
| | II. Division. | I. History. | |
| II. Poetry. | | | |
| III. Philosophy. | | | |
| | I. Divine. | I. Religion. | |
| | II. Human. | II. Philosophy. | |
| | | III. Man. | |

Such is a general view of the outline and arrangement of this beautiful work, but it would be most unjust to the illustrious author to form any opinion of its merits without a due consideration of its minute analysis, of the facility of its expression, of its *nervous language*, and that each part and

the whole is adorned, according to the nature of the subject under consideration, with *familiar, simple, or splendid imagery*.

As a first specimen of his minute analysis I will select his *divine proofs* of the advantages of learning, which he thus divides,—

- | | | | | |
|-------------------------|-------------------------|----------------------|----------------------|-------------------------|
| I. Before the Creation. | II. After the Creation. | I. Before the Fall. | I. Before the Flood. | |
| | | | | II. After the Fall. |
| | | II. After the Flood. | | |
| | | | | II. After Christianity. |

Let us take another specimen of the minuteness of his arrangement in his beau-

tiful analysis of the science of man, which he thus divides,—

- | | | | | | | | | | |
|------|-----------------------------|---|-----------------------------|--|------------------|------------------|--|--------------------------------|--------------------------------|
| MAN. | I. As an Individual. | 1. Of the undivided state, or Mind and Body united. | 1. The person of Man. | 1. Depravities and miseries. | 1. Body on Mind. | | | | |
| | | | | 2. Excellences, or calendar of human triumphs. | | 2. Mind on Body. | | | |
| | | | | 2. The league between Body and Mind. | | | 1. Action of Body and Mind on each other, or the doctrine of <i>Impression</i> . | | |
| | | | | | | | 2. How Body and Mind disclose each other, or the doctrine of <i>Disclosure</i> . | | |
| | | | | 2. The divided state, or Mind and Body separate. | | | 1. The Body. | 1. Health. | 1. Disclosure of Mind by Body. |
| | | | | | | | | 2. Strength. | |
| | | | | 3. Beauty. | | | 2. Phrenology, &c. | | |
| | | | | 4. Pleasure. | | | 2. Disclosure of Body by Mind. | | |
| | | | | 2. The Mind. | | | 1. Of the Understanding. | 1. The preservation of Health. | 1. Literate experience. |
| | | | | | | | | 2. Of the Will. | |
| | | 3. The prolongation of Life. | 2. Novum Organum. | | | | | | |
| | | 1. Of the Unde- | 1. Invention. | | | | | | |
| | | 2. Of the Will. | 2. Judgment. | | | | | | |
| | | | 3. Memory. | | | | | | |
| | | | 4. Traditions. | | | | | | |
| | | | 1. The image of Good. | | | | | | |
| | | | 2. The culture of the Mind. | | | | | | |
| | II. As a member of Society. | 1. Of Conversation. | | | | | | | |
| | | 2. Of Negotiation. | | | | | | | |
| | | 3. Of Government. | | | | | | | |

Such are specimens of his *minute arrangement*, in which, it will be observed, that he surveys the whole and every part of science.

It was his favourite maxim that he who cannot *contract* the sight of his mind, as well as *disperse and dilate it*, wanteth a great faculty.

The extent of his views was immense. He stood upon a cliff and surveyed the whole of nature; but he did not suffer a pebble on the shore to escape his notice. The elephant, it is said, can rend a tree and pick up a pin.

Such are specimens of his minute arrangement of the different parts of the work.

I now proceed to prove my second assertion that the work abounds with great felicity of expression. As a specimen I select his description of Queen Elizabeth, to whom he seems to have been attached by admiration and affection, which is, perhaps, the most valuable gem in her diadem. His admiration and respect for the Queen was perhaps more manifested after her death, and even after his own death, than during her life. In one of his wills he desires that *whatever part of his manuscripts may be destroyed, his eulogy, "In felicem memoriam Elizabethæ," may be preserved and published.*

[The learned Lecturer then read an admirable passage from Lord Bacon, when speaking of the connection between knowledge in the sovereign, and the happiness of the people.]

The next position which I advance is—that the work abounds with *nervous language*. I select the following as a specimen.

When speaking of the mode in which the power of intellect ought to be exercised over unsuspecting ignorance, he says—

The honest and just bounds of observation, by one person upon another, extend no further but to understand him sufficiently whereby not to give him offence; or whereby to be able to give him faithful counsel; or whereby to stand upon reasonable guard and caution with respect to a man's self; but to be speculative into another man, to the end to know how to work him or wind him, or govern him, proceedeth from a heart that is double and cloven, and not entire and ingenuous.

The next position which I have advanced is, that according as the nature of the subject required it, he illustrated his philosophy by *familiar, simple, or splendid* images. [The Lecturer first selected an instance of *familiar* imagery quoted in the Life of Lord Bacon, and proceeded thus:] We will next take an instance of *simple* imagery. When the subject required it, without departing

from simplicity, he selected images of a higher nature; as, when explaining how the *body* acts upon the *mind*, and anticipating the common senseless observation, that such investigations are injurious to religion, "*Do not,*" he says, "*imagine that enquiries of this nature question the immortality of the soul, or derogate from its sovereignty over the body. The infant in its mother's womb partakes of the accidents of its mother, but is separable in due season.*" So too, when explaining that the body is decomposed by the depredation of innate spirit and of ambient air, and that if the action of these causes can be prevented, the body will defy decomposition. "*Have you never,*" he says, "*seen a fly in amber more beautifully entombed than an Egyptian monarch?*" And when speaking of the *resemblance* in the different parts of nature, and calling upon his readers to observe that truths are *general*, he says, "*Is not the delight of the quavering upon a stop in music the same with the playing of light upon the water? Splendet tremulo, sub lumine pontus.*" Such are his beautiful and playful modes of illustrating abstruse subjects, but to such instances he did not confine himself. When the subject required it, his imagery was of a higher species, for he was too well acquainted with our nature merely to explain truth without occasionally raising the mind by lofty images to love and adore it. As an instance, he, when explaining the connection between knowledge and the love of order, says,

In Orpheus's Theatre all beasts and birds assembled, and forgetting their several appetites, some of prey, some of game, some of quarrel, stood all sociably together, listening to the airs and accords of the harp; the sound whereof no sooner ceased, or was drowned by some louder noise, but every beast returned to his own nature; wherein is aptly described the nature and condition of men: who are full of savage and unreclaimed desires of profit, of lust, of revenge, which as long as they give ear to precepts, to laws, to religion, sweetly touched with eloquence, and persuasion of books, of sermons, of harangues; so long is society and peace maintained; but if these instruments be silent, or sedition and tumult make them not audible, all things dissolve into anarchy and confusion.

I will conclude these instances of splendid imagery, with his elucidation of our love of posthumous fame. After having enumerated the various blessings attendant upon knowledge, he thus concludes,

"Lastly—leaving the vulgar arguments, that by learning *man excelleth* man, in that wherein *man excelleth* beasts, that by learning man

ascendeth to the heavens, and their motions, where in body he cannot come, and the like; let us conclude with the dignity and excellency of knowledge and learning, in that whereunto man's nature doth most aspire, which is immortality of continuance, for to this tendeth generation and raising of houses and families; to this, buildings, foundations, and monuments; to this tendeth the desire of memory, fame and celebration, and, in effect, the strength of all human desires. We see then how far the monuments of wit and learning, are more durable than the monuments of power or of the hands; for have not the verses of Homer continued twenty-five hundred years or more, without the loss of a syllable or letter?—during which time, infinite palaces, temples, castles, cities have been decayed and demolished.

It is not possible to have the true pictures or statues of Cyrus, Alexander, Caesar, no, nor of the kings or great personages of much later years, for the originals cannot last, and the copies cannot but lose of the life and truth. But the images of men's wits and knowledge, remain in books, exempted from the wrong of time, and capable of perpetual renovation. Neither are they fitly to be called images, because they generate still, and cast their seeds in the minds of others,—provoking, and causing infinite actions and opinions in succeeding ages. So that if the invention of the ship was thought so noble, which carrieth riches and commodities from place to place, and consociateth the most remote regions in participation of their fruits; how much more are letters to be magnified, which as ships, pass through the vast seas of time, and make ages so distant to participate of the wisdom, illuminations, and inventions, the one of the other?

From such observations, I have ventured to assert, that “each part of the work is minutely arranged, that it abounds with felicity of expression, and nervous language, and is adorned with images according to the nature of the subject, familiar—simple—splendid.

I will now proceed, as a mode of elucidating this part of the instauration, to select one specimen from different parts.

The work opens with a consideration of the objections to the advancement of knowledge, and of the advantages of knowledge. The objections are—

1st, By divines.

2ndly, By politicians.

3rdly, From the errors of learned men.

And first, let us take a specimen from the objections of divines.

These objections are—

1. The aspiring to knowledge was the cause of the fall.

2. Knowledge generates pride.

3. Solomon warns us that there is no end of making books, and that encrease of knowledge encreases anxiety.

4. St. Paul warns us not to be spoiled by vain philosophy.

5. Learned men are inclined to atheism.

Let me select one specimen from the objections by divines,—that knowledge has a tendency to create scepticism.

Let me say a few words in explanation of this opinion.

Knowledge consists in understanding the sequence of events, or cause and effect, and that every effect has a precedent cause is an opinion which is deeply impressed on the minds of us all. There is, however, a great difference with respect to the conclusions as to causes between ignorance and intelligence. Ignorance, either from that numbness of mind, when man, in the infancy of his reason, does not think at all, or from that mental idleness, which, to avoid the trouble of thought, will shrink from enquiry, ascribes the event to chance, and the beauty and order of the universe to accident or to immediate supernatural interposition, or to a wrong natural cause. Such are the common errors of ignorance as to causation—chance—interposition—wrong natural cause. The most common error, and the cause of frequent misery, is the ascribing an event to a wrong natural cause, as will be obvious by considering the consequences of a medical man mistaking the cause of any complaint.

The ascribing events to a wrong cause is not, however, the only error of Ignorance, for having discovered, as it is supposed, the true immediate cause, Ignorance is indolently content with the immediate cause, without seeking for the remote cause. Not so Intelligence, which endeavours to discover the true immediate cause, and, having discovered it, looks up to the first cause, “looks through nature, up to nature's God.”

You will observe the thoughts of Intelligence are two,

1st. It endeavours to discover the true immediate cause.

2nd. It looks through the immediate, to the final cause.

As to the discovery of the immediate cause, let me mention a few instances.

Such is the nature of the investigation by Intelligence of the immediate cause of any event; but the great difference between the reasoning of Ignorance and Intelligence consists in the enquiry by Intelligence into the remote cause. A few instances will explain this.

Dr. Franklin, who discovered the immediate cause of lightning, was not inflated by his beautiful discovery; he was conscious of the power “which dwelleth in thick

darkness, and sendeth out lightnings like arrows." Beautiful as was the discovery by Dr. Franklin of the cause of lightning, it appears to be far exceeded by the acuteness and sagacity in the discovery by Newton of the cause of the rainbow; but Newton, who discovered the immediate cause, did not rest in the proximate cause, but raised his thoughts to Him who placeth his bow in the heavens; very beautiful it is in the brightness thereof; it compasseth the heaven about with a glorious circle, and the hand of the Most High hath bended it.

This is the case with all of us, in proportion to our progress in knowledge, as may be seen by the simplest instances. When a vessel is carried away by a torrent—when a hurricane carries before it all the trees of the forest—when lightning strikes the cottage, the immediate cause of the calamity is obvious; and with this Ignorance is content; not so Intelligence. "*Who is it that causes to blow the loud winds of winter, and calms them again in the summer? Who is it that raises up the shade of the lofty forests, and blasts them with the lightning at his pleasure?*" *Such are the meditations of Intelligence.* This stopping at second causes, the property of animals and of ignorance, always diminishes as knowledge advances. Great intellect cannot be severed from piety. It was reserved for the wisest of men to build a temple to the living God. If I were to search for the best example of this truth thus stated, I should select Bacon's own pious mind: and never did a more pious mind exist. So far, therefore, from there being any weight in this objection, *that knowledge inclines the mind to scepticism*, it is wholly groundless. *Ignorance*, or *half knowledge*, inflated by its own conceit, may be sceptical, but true knowledge walks low in the deep valleys of humility, and is ever pious. Hence therefore Bacon said in his youth, and repeated in his age, "it is an assured truth, and a conclusion of experience, that a little, or superficial knowledge of philosophy may incline the mind of man to *atheism*, but a farther proceeding therein doth bring the mind back again to religion; for in the entrance of philosophy, when the second causes, which are next unto the senses, do offer themselves unto the mind of man, if it dwell and stay there, it may induce some oblivion of the highest cause; but when a man passeth on farther, and seeth the dependence of causes and the works of Providence, then, according to the allegory of

the poets, he will easily believe that the highest link of nature's chain must needs be tied to the foot of Jupiter's chair.

Let us for a moment consider the objections by politicians. I will select the last of these objections, *that knowledge generates a relaxation of discipline*, and love of retirement. The objection is thus stated:—

"*It doth divert men's travails from action and business, and bringeth them to a love of leisure and privateness, and it doth bring into states a relaxation of discipline, whilst every man is more ready to argue than to obey and execute.*"

As I selected Lord Bacon's pious mind as a strong, if not the best refutation of the calumny that learning inclines the mind to scepticism, so let me select his conduct to refute the erroneous opinion that learning incapacitates for action. Let us first consider him in active life.

From his youth he was engaged as a barrister, in almost every important case that was argued. He was Solicitor General—he was Attorney General—he was a member of the House of Commons for many years, and his name is to be found in every debate of importance—and how eloquently did he speak! He was a member at one time of, I believe, fifty committees, and so highly were his services estimated by the House, that though they declared that the Attorney General ought not to be a member of the House of Commons, they resolved that in his particular case, the general rule should be relaxed.—He was Chancellor of England, not in quiet times,—not in the dawn of a tranquil season, when lights and shades were blended: and almost undistinguished; but when darkness was upon the face of the country, and a revolution, which ended in the death of a king, was foreseen by this sagacious statesman: "*They*," he said, "*who strike at your Chancellor, depend upon it, will strike at the Crown.*"

Of his labours as a lawyer and a politician, it is impossible to form a correct opinion, without tracing his whole life. When admonished by his friends, that by these exertions he was endangering that life, he answered, "The preservation of my health is only a secondary consideration: my first, is to discharge my duty to my country, *necesse ut eam, non ut vivam.*" Such was the nature of his exertions in active life.

In conclusion, I shall merely say,—look at his works. I shall content myself with saying, in his own words:—

"We judge also that mankind may conceive some hopes from our example, which we offer, not by way of ostentation, but because it may be useful. If any one therefore should despair, let him consider a man as much employed in civil affairs as any other of his age, a man of no great share of health, who must therefore have lost much time, and yet, in this undertaking, he is the first that leads the way, unassisted by any mortal, and stedfastly entering the true path, that was absolutely untrod before, and submitting his mind to things, may somewhat have advanced the design."

Such are manifestations of what may be done by men engaged in active life, who do not waste their times of recreation in ostentation and sensuality. The great difference indeed between philosophical and common pursuits, consists in the employment of hours of recreation. Of this, there are two portraits, clearly and powerfully drawn, by two members of our profession. In Evelyn's Memoirs (published by Mr. Bray, an eminent solicitor, whom many of us remember), and in a work of Mr. Charles Butler, the eminent conveyancer, known to most, if not to all of us.

Evelyn in his Memoirs says, "5th December, 1678.—I was this day invited to a wedding of one Mrs. Castle, to whom I had some obligation, and it was to her fifth husband, a Lieutenant Colonel of the City. She was the daughter of one Burton, a broom-man, by his wife who sold kitchen-stuff, whom God so blessed that the father became very rich. There was at the wedding the Lord Mayor, the Sheriff, several Aldermen and persons of quality: above all, Sir George Jefferies, newly made Lord Chief Justice of England, with Mr. Justice Withings, danced with the bride, and were exceeding merry. These great men spent the rest of the afternoon, till eleven at night, in drinking healths, taking tobacco, and talking much beneath the gravity of Judges, that had but a day or two before condemned Mr. Algernon Sidney."

Mr. C. Butler, in his *Essay on the Life of Chancellor de l'Hôpital*, says, "When a magistrate, after the sittings of the Court, returned to his family, he had little temptation to stir again from home. His library was necessarily his sole resource; his books his only company. To this austere and retired life, we owe the Chancellor de l'Hôpital, the President de Thou, Pasquier, Loisel, the Pithous, and many other ornaments of the magistracy."

There is a passage in a speech of Mr. Curran in the case of the King against Mr. Justice Johnson, in which, when speaking of Lord Avonmore, he says,

"I had an old and learned friend, who had derived his ideas of civil liberty from the purest fountains of Athens and of Rome; who had fed the youthful vigour of his studious mind with the theoretic knowledge of their wisest philosophers and statesmen, and who had refined the theory

into the quick and exquisite sensibility of moral instinct, by contemplating the practice of their most illustrious examples: by dwelling on the sweet-souled piety of Cimon, on the anticipated Christianity of Socrates, on the gallant patriotism of Epaminondas, on that pure austerity of Fabricius, whom to move from his integrity would have been more difficult than to move the sun from its course! Yes, my Lord, we can remember those nights, without any other regret than, that they never can return! for,

*We spent them not in toys, nor lust, nor wine,
But search of deep philosophy,
Wit, eloquence, and poetry,
Arts which I loved, for they, my friend, were
thine."*

So true is the old maxim, "tell me your amusements, and I will tell you what you are."

So true is the observation by Dr. Johnson, "*They are the happiest men who are constantly engaged in worldly pursuits, and are capable, in moments of leisure, of enjoying the pleasures of intellectual enquiry, which contains the seeds of the destruction of error, and the cultivation of good, the mode of enjoying that *suavissima vita, indies sentire se fieri melioram.**"

So true is the observation of Lord Bacon:

"That will indeed dignify and exalt knowledge, if contemplation and action may be more nearly and strongly conjoined and united together, than they have been: a conjunction like unto that of the two highest planets, Saturn, the planet of rest and contemplation, and Jupiter, the planet of civil society and action: for no man can be so straitened and oppressed with business and an active course of life, but may have many vacant times of leisure whilst he expects the returns and tides of business. It remaineth therefore to be inquired, how these spaces and times of leisure should be filled up and spent, whether in pleasures or study; sensuality or contemplation; as was well answered by Demosthenes to Æschines, a man given to pleasure, who, when he was told by way of reproach that his oratory did smell of the lamp: 'Indeed,' said Demosthenes, 'there is a great difference between the things that you and I do by lamp-light.'"

There have been other instances of the same nature, although not in the same degree in England. Who can forget Sir Thomas More, or Sir Matthew Hale, who, turning from ostentation and sensuality, passed their happy hours of seclusion amidst the charities of private life,—intellectual enquiry, and the pieties of religion? And it is a fact not undeserving notice, that there are three works on imaginary governments, written by three Chancellors, Sir Thomas More's *Utopia*, Lord Bacon's *New Atlantis*, and Lord Erskine's *Armata*.

He must be a very inattentive observer of what is passing around him who is not conscious of the intellectual attainments which at this moment abound in our noble profession. It would be grateful to me if it were proper to mention them.

To these exertions how much are we indebted. Do we not see by this assembly, and by institutions of this nature, that there is a spirit of enquiry now moving upon the face of this happy country, which is directing, and will direct us, in the wise selection of our pleasures, and the judicious employment of our times of recreation?

DEBATES IN PARLIAMENT RELATING TO THE LAW

INTERNATIONAL COPYRIGHT.

Mr. P. Thomson, on moving for leave to bring in a bill on the 20th March, to establish a system of international copyright, said it was not his intention in this bill to enter at all upon the question of copyright at home. Whether it might be, in the opinion of the house, advisable to extend copyright to the length of years which his honorable friend Mr. Serjt. Tal- fourd suggested, was a proposition to which he desired to be understood as giving then neither assent nor dissent. He would leave that question altogether untouched; his present object being simply to give to foreigners for their works in this country that protection with regard to copyright which English authors in return might be enabled to obtain for their works in foreign countries. He did not think that there was a single individual who would be inclined to dispute that this was a just and an equitable principle. He did not think that any man was disposed to deny that literary works of genius ought to meet with a similar protection in this country to that which was extended to works of genius of another class. He alluded to the works of individuals engaged in industrious or mechanical pursuits, which in this country were already protected by our laws. It was clearly desirable to obtain for our authors that protection abroad which could already be obtained for works of a different description. Nothing appeared to him to be more urgent than the circumstances in which authors were placed, considered as British subjects, compared with those who were engaged in other pursuits demanding the exercise of the inventive faculty. If any man turned his attention to any department of mechanical science, and by the force of genius and intelligence succeeded in inventing a machine capable of being beneficially applied to the purposes of trade or manufactures, to the promotion of industry, or the diminution of manual labour, it was in the power of such an individual, in whatever part of the world he might have made the discovery, to come to

this country and take advantage of our patent laws, to secure to himself the exclusive privilege of profiting by that invention for a certain number of years. In the same way, if a native of this country, by the exertion of talent and industry, succeeded in inventing a machine, or making any useful discovery, it was in his power to go abroad and there reap the fruits of his discovery, all the advantages of which would be secured to him by the concession of a similar patent. But this was not the case with those who, devoting their time to literature, laboured alike for our amusement and instruction, with those who conferred by their works the greatest benefit on mankind. This was, he contended, a state of things which it behoved them to remedy as speedily as possible, and it was with this view that he proposed the present measure.

It was not his intention to weary the house by dwelling on the practical inconveniences to which authors were subjected by the present state of the law. But at the same time, in introducing this measure there were one or two examples which he was desirous to state to the house,—first, to show the injustice to which the existing state of the law subjected authors in this country; and next to shew how injuriously it affected the interests of literature generally. It was matter of notoriety that their works were pirated at once; that no sooner were their productions sent to the press in this country, than the utmost efforts were exerted to purloin proof-sheets for the purpose of sending them to America, France, Belgium, or Germany. Pirated editions were published at once in those countries, and transmitted forthwith to England, by which means the authors were deprived of the fair fruits of their labour—of those legitimate pecuniary rewards for which they were reasonably entitled to look. It was equally well known that the same system of piracy existed with regard to the works of authors in foreign countries; and that a work was no sooner published in France than proof-sheets were despatched to Belgium, where a pirated edition was immediately brought out, with which the English and foreign markets were at once inundated; and thus the foreign author was equally deprived of his fair and legitimate expectations of remuneration. He would take an instance of a work of fiction. He found upon inquiry that of the work of *Travels in America*, by Mrs Trollope, no less than 15,000 copies had been printed in Paris, without the slightest benefit to the author, either in their sale or in that of the copyright. He might cite instances of the same description in the works of Mr. Bulwer; but he would turn to works of greater importance—those of science, in reference to which this bill was particularly necessary. There was Dr. Arnot's *Elements of Physical Science*, a work of the greatest labour and pains, and for which everybody would admit the author was entitled to all the advantages the sale of copyright could bring him; and yet he (Mr. P. Thomson) had been informed that there was not a village of 200 inhabitants in the

United States in which several copies of a pirated edition were not to be found; for which the author never received one farthing, simply because there was no way of protecting the copyright. He might also instance Dr. Webster's Dictionary, which was published in the United States, and immediately pirated in England, for which edition the author received no remuneration whatever, although a vast number of it was sold; and Dr. Richardson's Dictionary, published in England and pirated in the United States, a work of great labour, merit, and expense,—a single number costing, he believed, three or four guineas. Thus, in one case, the American work was sold so cheap here that it superseded the English edition, and in the other the English work was sold so cheap in the United States that it entirely superseded the American edition. The principal cause of the evil was, that no sooner were works in the press, than attempts were made through the means of bribery, sometimes to a considerable amount, to obtain copies of them from persons engaged in the printing department, for the purpose of having them pirated in another country. One of the last of Sir Walter Scott's works had actually been purloined in sheets here, and published in the United States before it was published in London. It was pirated and sent to France in the same way, and published there also before the London edition appeared.

These were facts which showed that it was absolutely necessary, in justice to our own authors and to those of foreign countries, that some check should be put to the present system. Why should they afford protection to works of industry and art, and refuse it to works of genius, devoted to literary and scientific pursuits? Their doing so would not only be unjust towards the authors, but directly against our own interest. America and many of the European states had turned their attention to the subject of late. In France and Germany commissioners had been appointed upon the law of copyright, and in the United States a committee of inquiry. The commissioners in France and Germany said that they felt the inconvenience arising from the publication of their works in other countries, but that while they sought to protect their own authors they should also afford protection to foreign authors. Therefore, in order to obtain protection for ourselves abroad, it was necessary to hold out the prospect of protection in this country to the authors of other countries. The mode of doing this was not very simple. It would not do, in his opinion, to pass one general law, based upon the principle of reciprocity, because the law of copyright varied so much in different countries. In France, for instance, it was limited for a certain period; in Germany it was also limited, and for different periods; at Frankfort to 10 years, and in Prussia to 30; and in the United States it was limited to a much less period.

What he proposed then by this bill was to empower the Crown, by treaty with foreign

states, to grant to foreign authors the same degree of protection, and for the same number of years, that those states were willing to afford by treaty to our authors. That was to say, supposing a treaty to be made with France by which mutual protection to copyright was afforded for a period of 20 years, it would be necessary for the Crown, acting of course by the Privy Council, to take steps against the surreptitious introduction of editions of foreign works, published in violation of the copyright. After consulting the opinions of many competent judges, that appeared to him to be the best principle upon which to proceed. The moment the bill passed they would endeavour by convention with other countries to adopt the principle of reciprocal copyright. Communications were already being made on the subject, and he thought, when they should have the power of carrying the machinery of this bill into effect, they would not find much difficulty in concluding arrangements with it with foreign states. The right honorable gentleman concluded by moving for leave to bring in a bill to provide for international copyright.

Several members stated the difficulties which they apprehended would arise in attempting to carry the measure into effect, and

Mr. P. Thomson admitted that the subject was attended with great difficulties. He had felt so throughout; but it was his duty as much as possible to grapple with them. Even if the difficulties should be found insuperable, it would be no argument against the bill. It would only be useful in as much as it would enable them to overcome the difficulties; but if they were found insuperable, the bill would do no harm; it would only remain a dead letter. From all he knew, he was led to anticipate more difficulty from the United States than from any of the other powers. A noble lord (Mahon) seemed to think the general government had no power to make regulations with respect to copyright; but by one of the articles of the union, that power was not left in the hands of each state, but specially reserved to the general government; and therefore it was perfectly competent for the United States to enter into an arrangement on this subject. It was well known to all who had paid any attention to the question, that France was most anxious for it; and with respect to Germany, the diet of Frankfort last autumn passed a general enactment for the whole of the states, by which a law of copyright was adopted, and articles were also passed enabling the diet treating for the union to negotiate with foreign powers, and especially with England, for the purpose of arranging an international law on the subject. With respect therefore, to France and the states of Germany he had every reason to believe that he should be enabled to bring the negotiation to a satisfactory result. His object was to make a beginning; if at first the convention were limited to two or three states, the advantage would nevertheless be considerable.

Leave was then given to bring in the bill.

REMARKABLE TRIALS:

CASE OF MAJOR ONEBY, FOR MURDER IN A DUEL. 1729.

A conviction for murder in a duel has very rarely taken place. The following is one of the instances: The culprit, it appears, but for his own urgency in calling for the opinion of the Judges to whom the question was referred, might have died a natural death in prison. He had been engaged in two preceding duels, both of which terminated fatally to his antagonists.

His father was an attorney, and related by marriage to Lord Keeper Wright, and John Oneby, the unfortunate subject of this trial, was at one time train-bearer to the Lord Keeper. Rendered impatient by the delay of his expected promotion, he entered the army, and served under the Duke of Marlborough in several campaigns, and was soon promoted. While in winter quarters at Bruges, at the close of one of these campaigns, he had a quarrel with another officer, which occasioned a duel, and Oneby having killed his antagonist, was brought to trial before a court-martial; but acquitted of the murder. Soon afterwards the regiment was ordered to Jamaica, and Mr. Oneby joined it. During his residence at Port Royal, he fought another duel with a brother officer, whom he wounded in so dangerous a manner that he expired, after an illness of several months. The rank of major in a regiment of dragoons had been conferred on Mr. Oneby, in consequence of his services; but on the peace of Utrecht, he returned to England and was reduced to half pay. Returning to London, he frequented the gaming-houses, and one evening he fell into company with some gentlemen at a coffee-house in Covent Garden, when they adjourned to the Castle Tavern in Drury Lane, where they sat down to cards. Mr. Hawkins, who was one of the company, having declined playing, Mr. Rich asked if any one would set him three half-crowns. The bet was apparently accepted by Mr. Gower, who, in ridicule, laid down three halfpence. On this Major Oneby abused Gower, and threw a bottle at him; and, in return, Gower threw a glass at the Major. Swords were immediately drawn on both sides; but Mr. Rich interposing, the parties were apparently reconciled, and sat down again. Gower seemed inclined to compromise the difference, saying that he was willing to adjust the affair, though the major had been the aggressor. In answer to this, Oneby declared "he would have his blood;" and told Mr. Hawkins that the mischief had been occasioned by him. Hawkins replied, that "he was ready to answer if he had any thing to say;" to which Oneby said, "I have another chap first." Mr. Hawkins left the company about three o'clock in the morning; soon after which Mr. Oneby arose, and said to Gower, "Harkee, young gentleman, a word with you;" on which they retired to another room, and shut the door.

A clashing of swords being heard by the company, the waiter broke open the door, and on their entrance, they found Oneby holding Gower, with his left hand, having his sword in the right; and Mr. Gower's sword on the floor. Before the company could part the combatants, Gower dropped to the ground; but it was not imagined that he had been wounded, till blood was observed streaming through his waistcoat. On this one of the company said to the major, that he was apprehensive he had killed Mr. Gower; but the other replied, "No, I might have done it if I would; but I have only frightened him; but supposing I have killed him, I know what is to be done in these affairs; if I have killed him to-night, in the heat of passion, I have the law on my side; but, if I had done it at any other time, it would have looked like a set meeting, and not a rencontre." A surgeon of eminence having examined Mr. Gower's wounds, it was found that the sword of his antagonist had passed through the intestines,—of which wound he died the following day: on which Major Oneby was apprehended, lodged in Newgate, and tried for the murder. The above circumstances were stated on his trial; but some doubt arising in the minds of the jury, they brought in a special verdict, for the decision of the twelve judges. Having remained in Newgate two years, and the Judges not having met to give their opinion, the major became impatient of longer confinement, and therefore moved the Court of King's Bench that counsel might be heard on his case. The prisoner was therefore carried into court by virtue of a writ of *habeas corpus*; and the record of the special verdict being read, the reverend bench, with great humanity, assigned him two counsel, a solicitor, and a clerk in court. Lord Chief Justice Raymond, and three other judges, presided a few days afterwards, when the major being again brought up, his counsel and those for the crown, were heard: after which the Lord Chief Justice declared that he would take an opportunity of having the opinion of the other judges: and then the prisoner should be informed of the event.

After a considerable time the judges assembled at Serjeant's Inn Hall, to bring the matter to a decision. Counsel was heard again on both sides, and the pleadings lasted a whole day, during which the major boasted of the certainty of his escape, as he had only acted in conformity with the character of a man of honour. In the midst of these delusive expectations, he was informed that eleven of the judges had decreed against him, which greatly alarmed him. Soon after, the keeper of Newgate told him he must double iron him, to prevent his making his escape; and that, he must be removed to a safer place, unless he would pay for a man to attend him in his room. Oneby was shocked at this news; and, having written several letters to the judges, and other persons of distinction, to which he received no answer, he began to be apprehensive that the most serious consequences would result from the crime of which he had been convicted.

At length the judges re-assembled again at Serjeants' Inn Hall, and having declared their opinions, the counsel for the prosecution demanded that their lordships would proceed to judgment. The sense of the bench was accordingly delivered to Oneby by Lord Raymond, who said, that it was the unanimous opinion of the judges that he had been guilty of murder: and that his declaring he would have the blood of Gower had great weight against him. To this the major solemnly declared that he had never spoken such words; and begged the interposition of the judges with his majesty for a pardon. Lord Raymond told him it was in vain for him to deny the words, as they were returned in the special verdict: and that the judges could not interfere by an application to the king; but he must seek another channel through which to solicit the royal mercy.

A few days after this, sentence of death was passed on him; and he was ordered to be executed. His friends and relations exerted their influence to procure him a pardon; but their intercessions proved in vain. On the Saturday preceding the day he was ordered for execution, (1729,) he went to bed at ten o'clock; and, having slept till four o'clock on Sunday morning, he asked for a glass of brandy and water, and pen, ink, and paper: and sitting up in the bed, wrote a note to one of his relations. Having delivered this note to his attendant, he begged to be left to his repose, that he might be fit for the reception of some friends who were to call on him. He was accordingly left, and a gentleman coming into his apartment about seven o'clock, and the major's footman with him, he called out to the latter, "Who is that Philip?" which were the last words he was heard to speak. The gentleman approaching the bed side, found he had cut a deep wound in his wrist with a penknife, and was drenched in blood. A surgeon was instantly sent for, but he was dead before his arrival.

PARLIAMENTARY RETURNS.

CORONERS IN ENGLAND AND WALES.

ENGLAND.

Bedford.

1. There are two coroners acting within the county of Bedford, one for the body of the county, and one for the honour of Ampthill.

2. The present coroner for the county, Ezra Eagles, of the town of Bedford, gentleman, was elected and took the oaths at a county court held 4th May, 1831; but whether after a contest and polling of votes, I have no means within my office of ascertaining.

3. The present coroner for the honour of Ampthill, Mr. Richard Ambrose Reddall, appears to have held his office for a longer period than any documents in the Sheriff's office bearing upon this subject extend to.

S. Vasey, Under Sheriff of Bedfordshire. Baldock, 23 February, 1838.

There are two coroners within his county, one of whom is elected by freeholders, and the other is appointed coroner for the honour of Ampthill, which includes several parishes and places in Bedfordshire and Buckinghamshire, by his Grace the Duke of Bedford. The present coroner for the county was elected in the year 1831, without a contest; to the best of my recollection there has been but one contest for the office of coroner within this county since the 1st January 1800.

Theod. Pearse, Clerk of the Peace. Bedford, 13 December, 1837.

Berks.

There are four coroners; viz. 1 Newbury, 1 Reading, 1 Windsor, 1 Abingdon, elected by the town council; 1 Hungerford, elected by the bailiff for the time being. Two contested elections, one in January 1836, and one 25th May 1826. At the former, 356 votes polled; contest continued two days. At the latter, 615 votes polled; contest continued four days.

W. Budd, Clerk of the Peace.

Buckingham.

There are two coroners for the county of Bucks, who are elected by freeholders.

There is a coroner for the honour of Ampt- hill, which extends into certain parishes in the county of Bucks, and I am informed that such last mentioned coroner is appointed by his Grace the Duke of Bedford, as lord of the honour of Ampthill; but I have no record or other document in my office to enable me to state whether such information be correct.

I have been informed that there are coroners also for the boroughs of Buckingham and Chipping Wycombe, but how they are appointed I have no means in my office of knowing.

The several other matters required to be stated in this return, are matters respecting which I have no records or other documents in my office to enable me to set them forth; neither am I enabled, from information, belief, or otherwise, to give any account of the same.

Thomas Tindal, Clerk of the Peace. Aylesbury, 18 February 1838.

Cambridge.

There are two coroners for this county; their names are, George Joseph Twiss, of Cambridge, solicitor, and John Udney Robson, of Newmarket, solicitor.

There has been no contested election of a coroner in this county since 1st January 1800.

Christopher Pemberton,

Clerk of the Peace.

10th December, 1837.

Isle of Ely.

The number within the isle is two, one acting for the hundred of Ely and the south part of the hundred of Witchford; the other for the hundred of Wisbeach, the north part of the hundred of Wichford, the liberties of Whittlessey and Thorney, and the other parts of the isle.

Previously to the act of the 6 & 7 Will. 4,

c. 87, abolishing the secular jurisdiction of the Bishop of Ely, the coroners of the isle were appointed by the Bishop, not by the freeholders, consequently no contested elections for the office of coroner in the isle has occurred since 1st January 1800.

By the provisions of the act above referred to, the then acting coroners were continued in their respective offices for life or during good behaviour, and both gentlemen are still living.

Hugh Jackson, Clerk of the Peace.
Wisbeach, 11 December, 1837.

Chester.

There have not been any contested elections for the office of coroner in the county of Chester since 1st January 1800.

There are two coroners for this county, elected by the freeholders, viz. Mr. John Hollins, of Nether Knutsford, who acts for the hundreds of Bucklow and Macclesfield, and for a portion of the hundred of Northwich; Mr. Faithful Thomas of Chester, who acts for the hundreds of Broxton, Eddisbury, Nantwich, Wirrall, and for the remaining portion of Northwich hundred.

Both these gentlemen consider themselves as appointed for the whole county, and liable to be called upon in whatever district circumstances may require; but as a matter of convenience, their services have almost universally been confined to the above respective districts.

Mr. William Caldwell, of Frodsham, acts as coroner for the manor or lordship of Halton-fee, comprising several townships in the hundred of Bucklow and Eddisbury; he is appointed by the Marquis Cholmondeley, the lord of the manor. The county coroners assert a right to exercise their office within this manor.

Mr. Thomas Parrot acts as coroner for the borough of Macclesfield, and is appointed under the provisions of the Municipal Reform Act.

Henry Potts, Clerk of the Peace.
21 December, 1837.

Cornwall.

There are three county coroners elected by the freeholders of the county at large.

There has been no contested election for the office of coroner for this county, at which a poll has been taken, since 1st January 1800.

Some of the corporate towns within the county have separate coroners within their respective jurisdictions, but how and by whom such last-mentioned coroners are elected or appointed I have no information; but I believe the following are the separate jurisdictions having such coroners, viz. Falmouth, Penzance, Helston, Penryn, St. Ives, Truro, Bodmin, Launceston, Saltash, East Looe.

Edward Cooder, Clerk of the Peace.

Cumberland.

There are four coroners in the county of Cumberland, two appointed or elected by the freeholders of the county, and two for particular liberties or lordships, appointed by the

lords thereof. With regard to the number and dates of contested elections for the office of coroner since 1st January 1800, or the number of votes polled at such elections, or the time any contest lasted, I have no data by which any such returns can be made out.

W. Hodgson, Clerk of the Peace.
Carlisle, 13 December 1837.

Carlisle.

One election in March 1821; 1950 votes polled; election continued ten days. One 14th July 1835; 1486 votes polled; continued one day.

W. Nanson,
24 February 1838. Under Sheriff.

Derby.

There are five coroners for the county of Derby, viz. —One for such part of the county as is situated within the duchy of Lancaster, and which comprises the hundreds of High Peak and Wirksworth; appointed by the Rev. Francis Foxlowe, by virtue of a grant from the duchy of Lancaster, made to his father. One for the private liberty or hundred of Scarsdale; appointed by his Grace the Duke of Devonshire, as owner of the franchise. One for the private liberty or hundred of Repton and Grexley; appointed by Sir George Crewe, Bart., as owner of the franchise. One for the private liberty or hundred of Appletree; appointed by Lord Vernon, as owner of the franchise. One for the county of Derby, not comprised in the above franchises or private liberties, and which includes the hundred of Morleston and Litchurch; appointed by the freeholders.

The town clerk of Derby also acts as coroner within the borough of Derby, by virtue of his office.

There has been no contested election for the office of coroner, in the county of Derby, since 1st January 1800.

Given under my hand the 11th day of December 1837.

John Charge, Clerk of the Peace.

Devon.

Allan Belfield Bone, Joseph Gribble, H. Adon. Vallack, R. H. Aberdein, Thomas Copner, and James Partridge, elected by freeholders of Devon. None contested, except the second, which took place 3d May 1816, and lasted a few hours; 100 votes were polled.

R. Eales, Clerk of the Peace.

Dorsetshire.

County coroners elected by freeholders: Charles Hannen, of Shaftesbury, gent.; his election not contested.

John Wallis, of Dorsetshire, gent.; his election not contested.

John Frampton, of Cerne Abbas; his election was contested in the year 1836; the number of votes polled were 1033; the close of the poll was as follows:—

Frampton	606
Cory	417

Majority for Frampton . 182
The contest continued one day only.

Coroners for special districts, &c. by whom appointed :

The mayor of the borough of Wareham and Isle of Purbeck, for the time being by charter.

The mayor of the borough of Blandford Forum, for the time being, for the borough and town of Blandford Forum; appointment unknown.

William Florence, of Corfe Castle, gent., for the borough of Corfe Castle; his appointment unknown.

Thomas Fooks, of Sherborne, gent., for the liberty of Sherborne and Yetminster; by the Right Honourable Edward Earl Digby.

William Castleman, of Wimborne Minster, gent., for the hundreds of Badbury and Cogdean; by the late Henry Banks, esq.

Charles Harben, of Ringwood, gent., for the hundreds of Branborne and Pimperne; by the Marquis of Salisbury.

William Read Bell, of Gillingham, gent., for the liberty of Gillingham; by the Marquis of Westminster.

T. Fookes, Clerk of the Peace.

Durham.

There are four coroners in the county of Durham; viz, one for Easington, one for Chester Ward, one for Stockton Ward, and one for Darlington Ward. Prior to the stat. 1 Vic. c. 64, intituled, "An Act for regulating the coroners of the county of Durham," the coroners for the said county were appointed by the Bishop of Durham; but by that act it was enacted that the then coroners for the said four wards should continue coroners of the same wards respectively during their respective lives, or so long as they shall respectively well behave themselves; and that upon the death, removal or resignation of the coroner of either Easington Ward or Chester Ward, which form the northern division of the county, a coroner should be chosen for each of such wards in the place of the coroner making a vacancy, and so from time to time on every future vacancy of the office of coroner of either of the said wards. The coroner of each of the said wards to be chosen by its own freeholders in like manner as coroners are chosen in the case of other counties or divisions of counties in England; and there is a similar enactment in the said act with respect to the coroners of Stockton Ward and Darlington Ward, which form the southern division of the county; with a proviso that on every vacancy of the office of coroner in any of the said wards, and until the appointment of another coroner in his place, it should be lawful for any of the remaining coroners to act as coroner for the ward in which such vacancy might have occurred.

No contested election for the office of coroner has taken place in the county of Durham since 1st January 1800; and the same gentlemen who were respectively coroners of the said four wards at the time of the passing of the said act (15th July 1837) are still the coroners of the same wards respectively.

John Dunn, Deputy Clerk of the Peace.
14 December 1837.

Essex.

There are two coroners within the county elected by the freeholders, and one coroner for the peculiar and exempt jurisdiction of Writtle and Roxwell, appointed by the Right Honourable Lord Petre, as Lord of the manor of Writtle.

There has been but one contested election for the office of coroner in the county of Essex since 1st January 1800, and that took place on 19th December 1836, for one coroner only; the number of voters polled at such election was 174, and the contest continued three hours only.

Parker, Clerk of the Peace.
22 December 1837.

Havering-atte-Bower.

I beg to inform you that there is one coroner for the liberty of Havering-atte-Bower, appointed yearly by the jury at the court leet holden in and for the manor or lordship of Havering-atte-Bower, on Whit-Tuesday, according to an invariable custom.

I believe on one occasion there was a proposal of two different gentlemen to fill the office; but more than the requisite number for a jury agreed in the appointment of the same gentleman who had for years been annually elected. There may have been other occasions when some of the jury may have differed from the majority in the election, but I am not aware of it; but I cannot call any such difference a contest. Since the first January 1800, there has been no contested election for the office of coroner.

Wasey Sterry, Clerk of the Peace.
Romford, 16 December 1837.

Gloucester.

John Cook, Dec. 1817, about 4000 votes polled; contest continued nine days.

Joseph Mountain, 1820; elected without opposition.

William Joyner Ellis, 10 March 1823; elected without opposition.

John Garlick Ball, 31 May 1831, 6869 votes polled; the contest lasted eight days.

The above are the coroners for the county of Gloucester, and they were all elected by the freeholders.

Edward Blusome,

Deputy Clerk of the Peace.

Southampton.

J. C. Shebbeare, for the county; appointed by freeholders.

Henry Sewell and William Hearn, for the Isle of Wight; appointed by the Earl of Malmesbury, as governor.

George B. Corfe, for the town of Southampton; appointed by the town council.

John Henry Todd, for the county; appointed by freeholders.

John Henry Todd, for the borough and city of Winchester; appointed by the town council.

C. B. Longcroft, for the county; appointed by freeholders.

Philip Pargeter, for Fordingbridge, Hale, North Charford, South Charford, Rock-

bourne, Ibsley, and Ellingham; appointed by the Hon. John Coventry, as lord of the manor.
 * Harry Footner, for Andover; appointed by the town council.

E. Castleman, for Ringwood; appointed by John Morant, Esq., as lord of the hundred.

C. Castleman, for Ringwood; appointed by the town council.

Thomas Martell, for Portsmouth; appointed by Sir George W. T. Gervis, Bart., as lord of the hundred.

William Baldwin, for Christchurch; appointed by Sir George W. T. Gervis, Bart., as lord of the hundred.

* The election for the coroner of Andover was the only one contested, viz. on 6 June 1836. The contest lasted an hour, and 11 votes polled.

Hereford.

There are two coroners for the county of Hereford, who are elected by the freeholders; but there are none elected in any other way.

I have no documents to refer to, to make a return of the number of elections, the number of voters who polled, or the number of days that each contest lasted.

John Cleave, Clerk of the Peace.
 26 December 1837.

Hertford.

There are two coroners for the county, namely, Mr. Phillip Longmore, solicitor, Hertford; and Mr. Francis James Osbaldeston, solicitor, St. Alban's. There has not been any contested election for the office of coroner since 1st January 1800.

J. S. Story, Clerk of the Peace.
 St. Alban's, 13 December, 1837.

Huntington.

For the hundred of Hurstington, William Margett, of Huntingdon, gent., appointed by the lord of the liberty of the hundred of Hurstington.

For the hundred of Toseland, Robert Whetham Allpress, of St. Ives, gent., appointed by the lord of the liberty of the hundred of Toseland.

For the hundred of Leightonstone, John Beedham, of Kimbolton, gent., appointed by the lord of the liberty of the hundred of Leightonstone.

For the hundred of Norman Cross, Thomas Atkinson of Peterborough, gent., appointed by the lord of the liberty of the hundred of Norman Cross.

For the liberty of Ramsey, comprising the several parishes of Ramsey, Bury, Upwood, Great Ravely, Little Ravely, and part of Wistow, James Jones of Ramsey, gent., by the lord of the manor of Ramsey.

No contested elections.

N. Day, Clerk of the Peace.
 19 December 1837.

[To be continued.]

PRACTICE AS TO RETAINING COUNSEL.

We have from time to time stated the cases reported in the books on the practice relating to the Retainer of Counsel: see 2 L. O. 262; 10 L. O. 24, 291, 309, 369. We have also given the opinions of counsel on various cases submitted to them, which have not appeared in the books. See 10 L. O. 370, 424; 12 L. O. 305.

We have now to add the following case, with the opinion of Sir James Scarlett, at the time he was Attorney General. The case was stated thus:—

"A public company gave a general retainer to a king's counsel, usually practising in the Court of King's Bench, and who has advised the company on a large claim made by contractors on the same company, and has given a joint opinion in writing thereon, with the junior counsel of the company in conference with him."

"Is such king's counsel justified in accepting a special retainer for the Court of Exchequer, on an action brought there by such contractors against the company, without notice to such company?"

The opinion was as follows:—

"It has been the constant practice to accept such special retainers in other Courts, and upon other Circuits, under the same circumstances." "J. S."

See on the subject of retainers generally, 1 Montagu's Reports, 69, and 3 Chitty's General Practice, 132.

LIST OF NEW PUBLICATIONS.

Tomlyn's Popular Law Dictionary. 8vo. Price 18s. cloth.

Hudson's Executors' Guide. Neat cloth, gilt edges. Price 5s.

Meeson and Welsby's Reports in the Court of Exchequer. Vol. 3, Part 2. Price 9s.

Jeremy's Analytical Digest for 1837, to be continued annually. Price 9s. bds.

A Dissertation on the Statutes of the Cities of Italy, and a Translation of the Pleading of Prospero Farinacio, in defence of Beatrice Cenci and her relatives, with notes. By George Bowyer, Esq., of the Middle Temple. Price 7s. cloth.

Familiar Letters on Population, Emigration, Home Colonization, &c. By John Hilderton Burn. Second edition. Price 4s.

Keen's Rolls Reports. Vol. 2, Part 3. Price 9s. 6d.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

March, 1838.

Merriman, Samuel Benjamin, Austin Friars.
 Cooper, William, Shrewsbury.
 Holmer, George, Bridge Street, Southwark.
 Johnson, John Lovick, Essex Street, Strand.
 Young, Thomas Bristowe, 10, New Inn.
 Bromley, Joseph Warner, Gray's Inn Square.
 Nelson, Thomas Wright, New Court, Temple.
 Western, Edward, Great James Street, Bedford Row.
 Tyerman, Charles Rich, Cateaton Street.
 Sharp, William, the younger, Staple Inn.
 Sole, William Charles, Aldermanbury.
 Sole, Henry William, Aldermanbury.
 Wilkinson, Josiah, Chancery Lane.
 Davidson, Septimus, Cateaton Street.

MASTERS EXTRAORDINARY IN
CHANCERY.*From February 20th, to March 23d, 1838, both inclusive, with dates when gazetted.*

Allan, Robert Munro, Newcastle-upon-Tyne. Feb. 20.
 Gregg, Humphry Arthur, Kirkby Lonsdale. Feb. 27.
 Maddy, Thos. Watkin, Montgomery. Feb. 27.
 Overell, William, Ringwood, Southampton. Feb. 27.
 Ashwell, George, St. Albans. March 2.
 Holyoake, John, Bromsgrove, Worcester. March 6.
 Young, Robert, Battle, Sussex. March 9.
 Robinson, George Lockitt, Lane End, Stafford. March 16.
 Percy, Edmund, Nottingham. March 16.
 Pascoe, James, Penzance, Cornwall. March 16.
 James, John, Wrexham, Denbigh. March 23.

DISSOLUTIONS OF PROFESSIONAL
PARTNERSHIPS.*From February 20th, to March 23d, 1838, both inclusive, with dates when gazetted.*

Smith, George, and Thomas Dry, Serle Street, Lincoln's Inn, Attorneys, Solicitors and Conveyancers. Feb. 20.
 Smith, John Shaw, and Henry Winstanley, Cophall Court, Attorneys and Solicitors. March 13.
 Tuone, Henry, and Thos. Wm. Boyer, Loughborough, Leicester, Attorneys and Solicitors. March 16.
 Morris, Wm. Henry, and Henry John Neale Chase, Craven Street, Attorneys. March 23.

BANKRUPTCIES SUPERSEDED,

From February 20 to March 23, 1838, both inclusive, with dates when Gazetted.

Yates, Saul, Bury Street, St. Mary Axe, Bill Broker. Feb. 20.
 Sparrow, James, Shutt End, South Kingswinford, Stafford, Seedsman and Publican. March 6.

Foulkes, Robert, Denbigh, North Wales, Linen Draper and Mercer. March 6.
 Bottomley, Joseph, Beech Street, Barbican, Fan and Sky Light Manufacturer. March 9.
 Culthrop, George, Spalding, Lincoln, Merchant. March 13.
 Woolley, Hardy, Moulton, Lincoln, Grocer and Draper. March 23.
 Allen, James, and John Sherwin, Dartford, Kent, Farmers and Brickmakers. March 13.

BANKRUPTS.

From February 20 to March 23, 1838, both inclusive, with dates when Gazetted.

Aubrey, Thomas, Tredegar, Monmouth, Stationer and General Dealer. *Webb*, Newport, Monmouth; *Weeks & Co.*, Cook's Court, Lincoln's Inn Fields. Feb. 23.
 Andrew, Thomas, Moor Street, Soho, Victualler. *Lackington*, Off. Ass.; *Pollock*, Red Lion Sq. March 23.
 Beak, Johnson Hayward, Cheltenham, Gloucester, Wine and Spirit Merchant. *Gaby*, Bath; *Adlington & Co.*, Bedford Row. March 13.
 Brunt, James, Flash Bottom, Alstonefield, Stafford, Silk Merchant. *Redfern*, Leek; *Higginbotham*, Macclesfield; or, *Jenings & Co.*, Temple. Feb. 23.
 Butt, John, Whaddon, Gloucester, Glazier and Flour Dealer. *Nicholls*, Took's Court, Lincoln's Inn; *Lovegrove*, Gloucester. March 6.
 Black, John, Glasgow, Scotland, (and carrying on business in partnership in the city of London,) Merchant. *Edwards*, Off. Ass.; *Bell & Co.*, Bow Churchyard. March 9.
 Bell, Wm., Newcastle-upon-Tyne, Brewer. *Swain & Co.*, Frederick's Place, Old Jewry; *Gibson*, Newcastle-upon-Tyne. March 23.
 Boddy, Thomas, and Robert Catley, Leeds, York, Mahogany and Timber Merchants. *Battye & Co.*, Chancery Lane; *Rayner & Co.*, Leeds. March 23.
 Bridge, Jacob, jun., Chesterfield, Derby, Jacob Bridge, jun., Whittington, Derby, George Smith, Chesterfield, and Joseph Smith, Sheffield, York, Road Makers and Excavators and Contractors. *Battye & Co.*, Chancery Lane; *Dison*, Sheffield. Feb. 20.
 Bodle, Wm., Brighton, Sussex, Draper. *Lackington*, Off. Ass.; *Reed*, Bread Street, Cheapside. Feb. 23.
 Billows, George Baker, and George Billows, Poole, Dorset, Ironmongers. *Castleman*, Wimborne Minster; *Battye & Co.*, Chancery Lane. Feb. 23.
 Bell, Andrew, Newcastle-upon-Tyne, Merchant Tailor. *Swain & Co.*, Frederick's Place, Old Jewry; *Gibson*, Newcastle-upon-Tyne. Feb. 23.
 Cottrell, Wm., Birmingham, Plater and Factor. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. Feb. 20.
 Cooper, John, Trowbridge, Wilts, Brewer. *Dar & Co.*, Lincoln's Inn Fields; *Roseland*, Trowbridge. Feb. 20.
 Carter, John, Berwick Street, Soho, Victualler. *Gibson*, Off. Ass.; Messrs. *Scilly*, Serjeant's Inn, Fleet Street. March 6.
 Connah, Wm., Manchester, Coach and Omnibus Proprietor. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. March 20.
 Corin, Philip Burne, otherwise Phillip Branwell Corin, Penzance, Cornwall, Spirit Merchant.

- Slie*, Parish Street, Southwark; *Pender & Co.*, Falmouth. March 20.
- Dickson, Wm., Newcastle-upon-Tyne, Draper. *Jawson*, Symond's Inn, Chancery Lane; *Kent*, Newcastle-upon-Tyne. Feb. 23.
- Deakin, Thos., Blaenafon, Llanfoist, Monmouth, Agent of the Blaenafon Iron and Coal Company, and John Vipond of Varteg, Trevelth, Monmouth, Agent to the Varteg Iron Company; both carrying on business at Pontypool, Monmouth, as Ironmongers. *Williams*, Verulam Buildings, Gray's Inn; *Bevan & Co.*, Bristol; or *Geach*, Pontypool. Feb. 23.
- Davis, Robert, Pidford House, Isle of Wight, Merchant. *Corfield*, Bolton Row; *Hearn*, Isle of Wight. Feb. 23.
- Daft, John, Nottingham, Money Scrivener. *Payne & Co.*, Nottingham; *Taylor & Co.*, Great James Street, Bedford Row. Feb. 27.
- Davies, Ann, Newport, Monmouth, Spirit Dealer. *Diamond*, Abchurch Lane; *Townsend*, Newport. March 9.
- Dunn, Charles, jun., Digbeth, Birmingham, Bookseller and Stationer. *Taylor & Co.*, Bedford Row; *Ryland*, Birmingham. March 9.
- Dawson, John, Edmund Butterworth, and James Butterworth, Spotland, Rochdale, Lancaster, and of Manchester, Calico Printers & Bleachers. *Willis & Co.*, Tokenhouse Yard; *Joynson*, Manchester. March 13.
- Everett, John, Burwell, Cambridge, Grocer and Draper. *Bowden & Co.*, Aldermanbury; *Thurgood*, Saffron Walden. Feb. 20.
- Evans, Richard, Llanidloes, Montgomery, Innkeeper and Flannel Manufacturer. *Bigg*, Southampton Buildings; *Marsh & Co.*, Llanidloes. Feb. 27.
- Evans, Maria Benedicta, and Bereaford Eyton, Northumberland Street, Strand, Navy Agents and Bankers. *Johnson*, Off. Ass.; *Sydney*, New London Street, Fenchurch St. Mar. 6.
- Fairfax, John, Bath Street, Leamington Priors, Printer and Publisher. *Newton & Co.*, South Square, Gray's Inn; *Heath*, Warwick. Feb. 23.
- Fisher, Joseph, jun., Stroud, Gloucester, Woollen Draper and Tailor. *Paris*, Stroud; *Shearman*, South Square, Gray's Inn. Feb. 23.
- Freeth, Henry, Bath, Perfumer. *Clarke & Co.*, Lincoln's Inn Fields; *Clarke & Co.*, Bath. Feb. 27.
- Frost, Frederick Spencer, Cowick Street, St. Thomas the Apostle, Devon, late of Colyton, in the same county, Surgeon and Druggist. *Cloves & Co.*, King's Bench Walk; *Laidman*, Exeter. March 9.
- Fox, Samuel, Sheffield, York, Ironmaster. *Tattershall*, Great James Street, Bedford Row; *Pal-freyman & Co.*, Sheffield. March 23.
- Groucott, Matthew, Leamington Priors, Dealer in Glass and China. *Chaplin*, Gray's Inn Square. *Ingleby & Co.*, Birmingham. Feb. 23.
- Grimham, John, Clerkenwell Green, Victualler, Wine and Spirit Merchant, and Trader. *Johnson*, Off. Ass.; *Harper*, Kennington Cross. March 2.
- Griffith, Charles, Chester, Cabinet Maker and Upholsterer. *Lewis & Co.*, Ely Place; *Madlock*, Chester. March 2.
- Garlick, Wm. Whittaker, Manchester, Plumber & Glazier. *Willis & Co.*, Tokenhouse Yard; *Barrett & Co.*, Manchester. March 16.
- Gowar, Samuel, Tanner's-hill, Deptford, Kent, Wine Merchant. *Gibson*, Off. Ass.; *Kennett*, Cornhill. March 23.
- Hawkes, Matthew, Sharrington, Norfolk, Auctioneer and Appraiser. *Ballachey & Co.*, Holt, Norfolk; *Bridger*, Finsbury Circus. Feb. 27.
- Holdsworth, Joseph Smith, Lower Edmonton, Middlesex, Corn and ("Corn," *quare*) Coal Merchant. *Groom*, Off. Ass.; *Adamson*, Ely Place. March 2.
- Holt, John, and Henry Holt, Liverpool, Ship Brokers and Commission Merchants. *Blackstock & Co.*, Temple; *Almshull*, Liverpool. March 6.
- Halstead, George, Colne, Lancaster, Cotton Spinner and Cotton Manufacturer. *Johnson & Co.*, Temple; *Bagshaw & Co.*, Manchester. Mar. 13.
- Haggitt, John, Poultry, London, Hosier. *Green*, Off. Ass.; *Jones*, Size Lane. March 16.
- Hood, John, Ashby-de-la-Zouch, Leicester, Currier. *Snelson*, Ashby-de-la-Zouch; *Capes & Co.*, Bedford Row. March 16.
- Illingworth, David, Keighley, York, Heald-Yarn Manufacturer. *Smith*, Chancery Lane; *Hall*, Keighley. March 13.
- Jenkins, John, Windsor, Berks, Leather Seller. *Cannan*, Off. Ass.; *Poole*, Clement's Inn. March 23.
- Jones, John, Gelly Groes, Monythusloyne, Monmouth, Miller and General Shopkeeper. *Walters*, Newport, Monmouth; *White & Co.*, Bedford Row. Feb. 20.
- Jones, Thomas, Carnarvon, Ironfounder. *Weeks & Co.*, Cook's Court, Lincoln's Inn; *Williams*, Carnarvon. March 2.
- Jefferys, Benjamin, Birmingham, Grocer. *Chilton*, Chancery Lane; *Suckling*, Birmingham. March 6.
- Jamieson, Alexander, Wyke House, Sion Lane, Isleworth, Middlesex, Schoolmaster, Bookseller and Publisher. *Abbott*, Off. Ass.; *Bartholomew*, Gray's Inn Place, Gray's Inn. March 9.
- Jackson, Samuel Bennett, Liverpool, Grocer and Tea Dealer. *Mallaby*, Liverpool; *Chester*, Staple Inn. March 20.
- Lester, John, Derby, Shoe Manufacturer. *Strabbs & Co.*, Birmingham; *Williamson*, Derby; *Chaplin*, Gray's Inn. Feb. 20.
- Low, Giblem, Fearnlee, Saddleworth, York, Stone Dealer and Builder. *Richards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under Lyne. March 2.
- Lewis, Joseph, Margate, Kent, Timber Merchant. *Mercer*, jun., Ramsgate; *Austen & Co.*, Raymond Buildings, Gray's Inn. March 6.
- Lycett, Philip Edman, Worcester, Glove Manufacturer. *Bedford & Co.*, or *Reas*, Worcester; *Bedford*, Calthorp Street, London. Feb. 20.
- Moore, Hannah Maria, Maidstone, Kent, Ironfounder. *Edwards*, Off. Ass.; *Coe & Co.*, Pancras Lane, Bucklersbury. Feb. 23.
- Morgan, William, Cheltenham, Gloucester, Builder. *King & Co.*, Serjeant's Inn, Fleet Street; *Chadborn*, Gloucester; *Winterbotham*, Cheltenham. Feb. 27.
- Morgan, Griffith, Dolyddbyrion, Carnarvon, Tanner. *Jones*, Dolgelly; *Messrs. Lowe*, Southampton Buildings, Chancery Lane. Feb. 27.
- Murray, Richard, Norwich, Stationer. *Bevan*, Old Jewry; *Foster & Co.*, Norwich. Feb. 27.
- Mudge, John, Devonport, Devon, Printer and Stationer. *Bourdillon & Co.*, Great Winchester Street; *Husband*, Devonport. Feb. 27.
- Malachy, Joseph, Callington, Cornwall, and of Cotehele, in the same county, Timber Mer-

- chant. *Smith*, Chancery Lane: *Husband*, Devonport. March 6.
- McCartney, William, Liverpool, Ironmonger. *Norris & Co.*, Bartlett's Buildings, Holborn; *Tompson*, Liverpool. March 9.
- Margetts, Francis, Oxford, Wine and Spirit Merchant. *Green, Old Ass. Lock*; *Green*, Man's Court, Cornhill. March 23.
- Noble, Samuel, Crown Wharf, Woolwich, Kent, Builder. *Cannon*, Off. Ass.: *Smith*, Little Britain. Feb. 23.
- Nockells, William, and John Barsham, Marsh Gate Lane, Stratford, West Ham, Essex, Oxalic Acid Manufacturers. *Alsager*, Off. Ass.: *Treherne & Co.*, Leadenhall Street. Feb. 27.
- Neesom, Joseph, and Joseph Rhodes, Leeds, York, Dyers. *Woodhouse & Co.*, Temple; *Stett*, Leeds. March 5.
- North, William, Spilaby, near Boston, Lincoln, Tanner and Currier. *Lawrence & Co.*, Bucklersbury; *Gummi*, Spilaby. March 6.
- Nash, Jonathan, Bristol, Brewer. *White & Co.*, Bedford Row; *Bevan & Co.*, Bristol. March 9.
- Nickols, Samuel, Leeds, York, Carpet Merchant. *Strangways & Co.*, Barnard's Inn; *Ray*, Leeds. March 23.
- Petit, Francis, Sheffield, York, Joiner and Builder, *Fildes*, Serjeant's Inn, Chancery Lane. *Rayner & Co.*, Sheffield. Feb. 20.
- Peytt, Lott, Stowmarket, Suffolk, Bricklayer and Builder. *Gudgum*, Stowmarket; *Walter & Co.*, Symond's Inn, Chancery Lane. March 6.
- Philp, Richard, late of Lindfield, Sussex, now of Peele's Coffee house, Fleet Street, London, and of Judd's Place, St. Pancras, Middlesex, Malster. *Stevens & Co.*, Cheapside. March 9.
- Pitt, Thomas, Southtown, otherwise Little Yarmouth, Suffolk, Merchant. *White & Co.*, Frederick's Place, Old Jewry; *Worship & Co.*, Great Yarmouth. March 9.
- Robins, Alfred, Tavistock Street, Covent Garden, Printer. *Gibson*, Off. Ass.; *Adtridge & Co.*, Austin Friars. Feb. 20.
- Richmond, Richard, Aycliffe, Durham, Shoe Maker. Messrs. *Love*, Temple; *Clarke & Co.*, Glsbrough, York. Feb. 23.
- Ride, Samuel, Leicester, Engineer, Millwright and Ironfounder. *Dyneley & Co.*, Gray's Inn; *Robinson & Co.*, Leicester. Feb. 27.
- Ride, James, Leicester, Engineer, Millwright and Ironfounder. *Dyneley & Co.*, Gray's Inn; *Robinson & Co.*, Leicester. Feb. 27.
- Richardson, Mary, Chelmsford, Essex, Keeper of an Inn. *Green*, Off. Ass.: *Copland & Co.*, Chelmsford; *Biggs*, Southampton Buildings. March 2.
- Rogers, John, Manchester, Hop Merchant. *Hampson*, Manchester; *Adlington & Co.*, Bedford Row. March 13.
- Robins, Greenway, Walworth, Surrey, Auctioneer and Builder. *Whitmore*, Off. Ass.; *Lythgoe & Co.*, Essex Street. March 20.
- Sealy, Henry Wilmot, City Road, Upholsterer and Cabinet Maker. *Groom*, Off. Ass.; *Berry*, Trafalgar Square. Feb. 20.
- Sharland, George, Exeter, Wine and Spirit Merchant. *Brutton & Co.*, Bedford Row; *Brutton & Co.*, Exeter. Feb. 27.
- Sadd, Sarah, and Thomas Sadd, Beccles, Suffolk, Grocers. *Bromley*, South Square, Gray's Inn; *Bohun & Co.*, Beccles. March 13.
- Sweet, Wm., Chancery Lane, Carver and Gilder. *Goldmid*, Off. Ass.; *Duncombe*, Lyon's Inn. March 16.
- Sharples, Christopher Lucas, Liverpool, Ironmonger. *Blackstock & Co.*, Temple; *Brabner & Co.*, Liverpool. March 16.
- Trevitt, James Green, Liverpool, Linen Draper. *Taylor & Co.*, Bedford Row; *Worthington & Co.*, Liverpool. Feb. 20.
- Trepess, Wm., sen., and Wm. Trepess, jun., Warwick, Builders. *Nelson*, New Court, Temple; *Morris*, Warwick. Feb. 23.
- Toll, Wm., St. Germans, Cornwall, Corn Factor and Miller. *Beer*, or *Gilbard*, Devonport; *Barnes & Co.*, St. Helen's Place. March 9.
- Tellow, John, Ansterlands, Saddleworth, York, Butcher; and of Hey Chapel, Lancaster, Cotton Spinner. *Milne & Co.*, Temple; *Morris*, Manchester; *Potter*, Manchester. March 16.
- Turnbull, Benjamin, Cheltenham, Coal Merchant and Hoaler. *Shearman*, South Square, Gray's Inn; *Paris*, Strand. March 20.
- Winchester, Henry, Buckingham Street, Stationer. *Belcher*, Off. Ass.: *Briggs*, Lincoln's Inn Fields. Feb. 20.
- Woods, Samuel, Manchester, Manchester Warehouseman and Commission Agent. *Bower & Co.*, Chancery Lane; *Atkins*, Manchester. Feb. 20.
- Wyatt, John, West Smithfield, Machinist, Plough and Agricultural Manufacturer, Smith and Founder. *Graham*, Off. Ass.; *Dodd*, Billiter Street, Leadenhall Street. March 2.
- Wood, John, High Street, St. Giles, Eating-house keeper. *Goldmid*, Off. Ass.; *Reilly*, Clement's Inn. March 2.
- White, Robert, Ilford, Essex, Draper. *Clark*, Off. Ass.; *Ashurst & Co.*, Cheapside. March 6.
- Whitehurst, Wm. Henry, Joyes, Dartford, Kent, Chalk and Flint Merchant. *Turpin*, Off. Ass.; *Knobel*, Carlton Chambers, Regent Street. March 6.
- Whitehouse, Joseph, and Isaiah Round, Birmingham, Manufacturers of Wrought Iron. *Wyland*, Birmingham; *Taylor & Co.*, Bedford Row. March 6.
- Watson, John, jun., Marton, near Gainsborough, Lincoln, Sadler. *Scott*, Lincoln's Inn Fields; *Codd & Co.*, or *Plaskitt*, Gainsborough. March 16.

PRICES OF STOCKS.

Tuesday, March 27, 1838.

3 per Cent. Consols. Anns.	93 $\frac{1}{2}$ a $\frac{1}{2}$
New 3 $\frac{1}{2}$ per Cent. Annuities	100 $\frac{1}{2}$ a 1
Annuities for 30 years [expire 5th Jan. 1860]	15 $\frac{1}{2}$
India Bonds to be paid off 30th June	8s. pm.
South Sea Stock div. 3 $\frac{1}{2}$ per Cent.	104 $\frac{1}{2}$
Bank Stock for opening, 12th April 209	a 8 $\frac{1}{2}$ a 9
3 per Cent. Consols. for Account, Apr. 10	93 $\frac{1}{2}$
Exchequer Bills, £1000 at 2 $\frac{1}{2}$ d.	63s. a 65. pm.
Ditto	500l. at 2 $\frac{1}{2}$ d. 63s. a 65s. pm.
Ditto	Small at 2 $\frac{1}{2}$ d. 63s. to 65s. pm.

. The Stocks in which there was "Nothing done," or, no business transacted, are omitted in the above list.

The Legal Observer.

SATURDAY, APRIL 7, 1838.

— " Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CONTROVERTED ELECTIONS.

THE subject of controverted elections for parliament was discussed on Monday last, and we think that the debate will lead to an important and beneficial change in the present system. There are now several plans before the House for effecting a change. The first is Mr. Buller's, which we have already fully stated.^a The second is Mr. O'Connell's, which is to call in aid a Judge of the Superior Courts and a jury, and thus to remove the jurisdiction to a great extent from parliament. The third is Sir Robert Peel's, by which it is proposed that at the commencement of every session the Speaker shall appoint six members of the House, to be chosen from all parties, and that these persons shall choose the committees by which the election petitions shall be tried. That each committee shall consist of seven persons, who shall have the aid of an assessor: but that such assessor shall be appointed *pro hac vice*, and that there shall be no permanent staff of assessors. The fourth plan is Lord Stanley's, which is not inconsistent with any of the preceeding ones,—that a select committee shall be appointed to consider the law relating to elections, and that they shall make a digest of election law for the guidance of future committees.

The plan of Sir Robert Peel seems to have been very generally approved of by the House. We have no hesitation in saying that it is much better than the practice which now prevails. As we before remarked, the present ballot for an election committee, is especially calculated to engender and foster party feeling, and we

think that Mr. Buller's plan is open to the same objection. He substitutes a challenge for the present mode of striking, but we cannot see that this would be much better. Any plan, therefore, that should divest members as far as possible, from party spirit, is to be preferred, and Sir Robert Peel's is certainly calculated to do this; and we think that if the honourable feeling of the man, instead of the one-sided zeal of the partizan were relied on and called into play, we should have much better and fairer decisions; and it is to be remembered, that the House contains excellent materials for deciding any question whatever, if they can only be rendered available. The chief objection to this plan is, the appointment of the six members who are to nominate all committees. This would certainly be a great power to place in the hands of any men, however competent or trustworthy, and we much fear that it would be looked on with jealousy.

The subject will be resumed on Tuesday next, when Lord Stanley will state whether he will proceed with the appointment of his committee. We hope that he will persevere, and we are sure that, if it be well selected, it may do much to settle this harassing and perplexed body of law,—the difficulties of which are only to be equalled by the ignorance with which it is construed. We have already deplored the present practice, and since we last^b reviewed the decisions to which committees have come on it, which it is quite idle to report as matter of law, we have had no reason to change our opinions as to their partiality and incompetency.

^b *Ante*, p. 305.

^a See *ante*, pp. 87 and 290.

REFORM IN BANKRUPTCY.

"As we have ever since the commencement of this work, laboured to obtain an efficient reform in the law and practice of bankruptcy, we are truly glad to have so able and experienced a coadjutor as Mr. Fane.^a We have already noticed his former pamphlets, relating chiefly to his claims for professional rank, and we could have wished that he had not, on the present occasion, mixed up his personal complaints so much with the general subject. He mentions, however, an additional fact as to the precedence which he claims for his Court. When the members of the New Court of Bankruptcy were invited by the Earl Marshal to assist with the other judicial functionaries of the Crown, at the interment of his late Majesty, and were of course assigned that place in the ceremonial which was given them by the act of parliament, and the letters patent of the Crown, the Attorney and Solicitor General officially protested against it, accompanying their protest with "this most extraordinary suggestion," that the "members of the New Court had no official rank whatever."

Passing to the main subject of his pamphlet, Mr. Fane thus deliberately records his opinion as to the present state of the bankrupt law.

"In performing the task, which I have thus set myself, it is not my intention to sacrifice truth to flattery, and therefore I will not be deterred, either by the dread of offending, or the fear of being thought to have outstepped the bounds of decency and moderation; from laying before you at the outset this startling truth; a truth, which a ten years' experience under the system lately superseded, and a six years' experience under that which has succeeded it, have indelibly impressed upon my mind; namely, that the bankrupt law is a mass of folly and absurdity from beginning to end; that it violates every principle of common sense; that it is the occasion of the grossest injustice, and the most appalling frauds and injuries; that, as a whole, it is a disgrace to a civilized community; and that if it does not produce all the mischiefs, which its monstrous principles would naturally generate, it is because the good sense and good feeling of mankind counteract the absurdities and iniquities of the law. These, Sir, are severe denunciations: whether they are just or not I will leave it to yourself to

decide, when you have read the statements which I shall lay before you."

And he follows this up by an express mention of grievance.

"By the law, as it at present stands, insolvency is assumed to be a crime!—The supposed criminal is tried in his absence, on *ex parte* evidence, and, if the inquiry takes place, in the country, he is tried by persons *not judges*, who have a direct pecuniary interest in condemning him; for, if they acquit him, their fees cease, and if they condemn him, their fees continue, and *may* amount to any sum!—No sooner is he thus condemned, than he is deprived by the law of every farthing he possesses!—If he comes to the judicial functionaries who have thus condemned and stripped him, and asks upon what grounds they have proceeded, the answers he gets is simply this, "Find out as you can; we won't tell you; if you like you may bring an action, and the answer to that action will tell you." The creditor, who has proceeded against him, who, if an injured, is at least *not* a ruined man, is admitted to proceed before a jurisdiction, where the expenses are comparatively trifling; the debtor ruined by the process, stripped as I have said, of every farthing he possesses, must seek redress, if at all, in the more expensive courts!—and although the proceedings are, up to this point, thus unjust and *inane*, strange to say, the law treats them as though they were both just and *conclusive*; for, besides sanctioning the seizure of the debtor's property, it authorizes the publishing his bankruptcy in the *Gazette*; and enacts, that if he does not, within a certain short period, come in and surrender, and sign and subscribe his surrender, and submit to be examined as to his affairs, he shall be deemed to be guilty of a capital felony, and, if convicted, shall be liable to be transported for life (formerly the punishment was death); and this, even although his non-surrender may have been occasioned by his not knowing that he had been declared bankrupt, or by an accident or illness rendering his surrender physically impossible."

In a subsequent page he illustrates this as follows:

"Such, Sir, is an outline of the present system, and I trust that you will think that the expressions I have used respecting it are not too strong for the occasion. Certain it is, that, in thus condemning it, I am sanctioned by the authority of Lord Eldon, Sir Samuel Romilly, Mr. Montagu, and indeed every person of eminence, who has ever been called upon to express an opinion on the subject; and if any other sanction were wanting, I could seek no better than that which is furnished by the case of Mr. Chambers.

"Mr. Chambers was declared bankrupt in 1825: he denied that he had committed any act of bankruptcy, and resisted his commission. From that time to the present, the question whether he is bankrupt or not has been in

^a Bankruptcy Reform, in a Series of Letters addressed to Sir Robert Peel, Bart., by C. Fane, Esq., one of the Commissioners of her Majesty's Court of Bankruptcy. 1838.

Mitigation; and although twelve years have elapsed, and 170,000*l.* have been received by his assignees, the question of his bankruptcy remains undecided, and not one farthing has reached his general creditors. Meanwhile, there has been that wasteful administration of his property, which, without any fault in assignees, is inseparable from such a state of things: thirty thousand pounds (!!!) have been paid to the solicitors to the estate, and other solicitors, who have concurred with them in supporting the commission; between ten and twenty thousand pounds have been the costs of Mr. Chambers; between three and four thousand pounds have been paid to an accountant, and more than one thousand to the official assignee; and thus nearly fifty thousand pounds have been spent, without even ascertaining whether the party be bankrupt. It will scarcely be believed, that the question, upon which fifty thousand pounds have been spent thus fruitlessly, was, whether Mr. Chambers had on some occasion desired a servant to say "not at home" to a creditor when he called. When I last heard of Mr. Chambers, he was in a debtors' prison."

BANKRUPT COMMISSIONS AND FIATS.

Return to an order of the Honourable the House of Commons, dated 1 March 1838;
—*for*,

A RETURN of the number of Commissions of Bankruptcy and Fiats issued from 1833 to 1837, both included, distinguishing each year; and also distinguishing how many Town Commissions and Fiats, and how many Country Commissions and Fiats, were opened in each year.

A RETURN of the number of Fiats in Bankruptcy issued from 11th January 1832 to 11th January 1838, distinguishing each year; and also distinguishing how many Town Fiats, and how many Country Fiats, were issued, and how many were opened in each year.

Number of Fiats issued.

Year ending	Town.	Country.	Total.
11th Jan. 1833	766	.. 944	.. 1700
1834	518	.. 765	.. 1283
1835	599	.. 680	.. 1279
1836	557	.. 737	.. 1294
1837	483	.. 724	.. 1207
1838	531	.. 1408	.. 1939
	3444	5258	8702

Number of Fiats opened.

Year ending	Town.	Country.	Total.
11th Jan. 1833	651	.. 607	.. 1258
1834	437	.. 602	.. 1039
1835	491	.. 616	.. 1107
1836	467	.. 570	.. 1037
1837	417	.. 546	.. 963
1838	442	.. 896	.. 1338
	2905	3837	6742

The number of Fiats issued is taken from the books in my office. I have no record of those opened; but I have had the numbers counted of those advertised in The London Gazette; and this may probably meet the object sought by the return.

W. VIZARD,
Secretary of Bankrupts.

12th March 1838.

THE PROPERTY LAWYER.

SEPARATE USE.

We have very recently brought before our readers, the state of the law relating to limitations to the separate use of married and unmarried women. (See *ante*, p. 51.) We now add the following case:

Under an indenture of the 28th of February, 1794, the plaintiff, Lady Barrymore, (who was the widow of Richard, Earl of Barrymore), was entitled to an annuity of 300*l.* for life. She afterwards married the defendant J. M. Williams; and, by an indenture dated the 29th of May, 1795, after reciting that upon the treaty for the marriage, it had been agreed that the annuity should be assigned to trustees for the separate use of Lady Barrymore in manner aftermentioned; Williams and Lady Barrymore assigned the annuity to trustees, in trust, during their joint lives, to pay the annuity, as the same should become due and payable, to such person or persons, and for such intents and purposes as Lady Barrymore should, by any writing signed with her name, in her own handwriting, notwithstanding her said coverture, direct or appoint, but so as not to deprive herself of the benefit thereof by sale or other anticipation; and, for want of such direction or appointment, to pay the same to Lady Barrymore, for her own sole, separate, and peculiar use and benefit; it being thereby agreed and declared, between and by all the parties thereto, that the annuity should not be subject to the debts, control, interference, or engagements of J. M. Williams, and that the receipt or receipts of Lady Barrymore, or of any person or persons so to be by her appointed to receive the same as thereinbefore was mentioned, should, notwithstanding her marriage with J. M. Williams, be a sufficient discharge or sufficient discharges to the person or persons paying the same or any part thereof. By an indenture dated the 7th of November, 1812, after reciting the deed of the 28th of February 1794, and that, since the execution of that deed, Lady Barrymore had intermarried with Williams, and that, by virtue thereof, Williams was entitled to receive the annuity in as full and ample a manner as Lady Barrymore before her marriage with him could receive the same under the deed of the 28th of February, 1794: Lady Barrymore and Williams, in consideration of 2,275*l.* paid to them

by Harriette Atkins, assigned the annuity to her. The object of the bill was to have that assignment declared fraudulent and void, and delivered up to be cancelled. Miss Atkins, in her answer, denied that she had any knowledge or notice of the deed of May 1795; and added that she totally disbelieved for the reasons which she stated, that any such deed was executed prior to the execution of the deed of November 1812.

The Vice Chancellor, in the course of his judgment, observed that the plaintiff's evidence did not shew that the deed of May 1795, was in existence prior to the execution of the deed of November 1812, and then proceeded thus: Supposing, however, that the deed of 1795 was executed at the time it bears date, it appears to me to admit of this construction, namely, that in the first instance, it is a grant to such person or persons as Lady Barrymore should, in a given manner appoint, and subject thereto, to her sole use, generally: and, if that be so, then it, was competent to her, to dispose of the annuity without executing the power in the manner before referred to. The deed does not say, "Do and shall pay the same into her own hands, &c." but, simply, "to her, for her own sole use." Then is this different from a limitation to such uses as A. shall, in a certain manner appoint, and subject thereto, to A. generally? In my opinion, this is within the spirit of *Cox v. Chamberlain*, 4 Ves. 681; which has been supported at law, by *Rebecca v. Whitham*, 6 East, 283, and *Wilde v. Kent*, 1 Taunt. 334. For Lady Barrymore had both a limited power of appointment, and the general uncontrolled dominion over the property; and therefore, if we find her conveying the property by the deed of 1812, the grantee will take, notwithstanding the restrictions imposed on the power of disposition. His Honor then commented upon the other parts of the case, and concluded by stating that his opinion, both on the law and the facts was, that no case was made against the defendants, and consequently, that the bill must be dismissed with costs. *Barrymore v. Ellis*, 8 Sim. 1.

NOTICES OF NEW BOOKS.

A popular Law Dictionary, familiarly explaining the Terms and Forms of English Law, adapted to the comprehension of persons not educated for the Legal Profession, and affording information peculiarly useful to Magistrates, Merchants, Parochial Officers, and others. By Thomas Edline Tomlins, Attorney and Solicitor. London: Longman & Co., 1838.

We think that the execution of this work fulfils the design expressed in the title page. The articles are written in a popular style,

adapted to the various classes of persons for whose use the book is intended. We cannot say that it will be valuable equally to the law as the general student, because it does not, and evidently was not meant to, comprise all the technical information, which professional persons require. The compiler also has deemed it unnecessary with reference to the main object of his publication, to quote the authorities for the doctrines and explanations which he states. To the legal inquirer, these are of great importance; though the general reader may consider them an incumbrance.

The Executor's Guide. By J. C. Hudson, of the Legacy Duty Office, Somerset House. London: Longman & Co., 1838.

This is a useful little work. An important part of the duty of an executor consists in preparing and passing his accounts at the Stamp office, and as the author of this "Guide" is officially employed in that department of the public service, it is obvious he possesses the best means of communicating proper instruction on the subject. The work appears to be carefully written, and well arranged.

Report of the Proceedings under a Brieve of Idiocy, Duncan v. Yoolow, tried at Coupar Angus, January, 1837, with an Appendix of Documents and an Introduction. By David Colquhoun, Esq., Advocate. Edinburgh: Clark, 1837.

This is one of the most interesting cases of "a Brieve" or Inquisition for "cognoscing" or ascertaining the state of mind of an alleged idiot. Some of the most eminent medical men in Scotland were examined, and the contradictions in the opinions given, are exceedingly curious. The advocates on both sides displayed great skill, learning, and eloquence; but more especially we admire the speech of the Advocate for the defender. The remarks upon the evidence are particularly acute on each side. The charge of Mr. Sheriff L'Amey is able, clear, concise, and impartial; and we think the jury could do no other than negative the imputation of natural unweariness of mind in the subject of the Inquest. Mr. Robertson was the Advocate for the pursuer, and Mr. McNeill for the defender. The Editor of the Report, Mr. Colquhoun, has written an able Introduction on the ge-

neral law bearing on the subject, and has added the peculiar Forms of Proceeding applicable to the case.

DESTRUCTION OF PAPERS BY FIRE.—LIABILITY OF SOLICITORS.

A PETITION was heard by the Lord Chancellor, on the 30th March, relating to the destruction of the papers in various Chancery suits conducted by Messrs. Blackstock, Bunce, Vincent & Sherwood, who resided at No. 1, Paper Buildings, where the late fire occurred. The petition, which was supported by Mr. Spence, stated that early in the morning of the 6th March, 1838, a fire broke out in the chambers adjoining the offices of the petitioner, Mr. Vincent, one of the firm of Blackstock & Co., in Paper Buildings, and the fire extended to several sets of chambers and offices, and, amongst others, to the offices of the petitioner. That the whole of the papers in the suits in the Court of Chancery in which the petitioner was engaged as solicitor were entirely consumed by such fire. That the petitioner was concerned as solicitor for parties in upwards of 120 suits, which were described in a schedule; and which suits are now pending, and in the course of the prosecution of such suits the petitioner had expended large sums in the obtaining decrees, orders, and reports, and in filing and taking office copies of reports, and office copies of bills, answers, demurrers, and exceptions. That the petitioner was also concerned in many suits which, at present, he is unable to recollect; but in which he will from time to time, as they are discovered, require copies of proceedings already had. That to enable the petitioner to prosecute the causes for his clients, it will be necessary to obtain fresh copies of the decrees, orders, reports, bills, answers, demurrers, and exceptions, which the petitioner presumed he would have to bear at his own individual expense. Under these circumstances, and inasmuch as the full amount had already been paid for such papers, his Lordship was requested to give the necessary directions to enable the petitioner to obtain copies of such decrees, &c., upon paying the price of the copying thereof only.

The Lord Chancellor refused to make any order on this petition, on the ground that, as the accident by which the papers were

consumed was not imputable to Mr. Vincent, he would not be liable at his own expense to procure such copies of the papers consumed as were necessary for the prosecution of the suits, but they must be procured at the expense of his clients. It was the suitors, therefore, only who had any interest in the application, and no order could be made on this petition for their benefit. But his Lordship stated that he would consider whether an order ought not to be made for the benefit not only of the suitors in the suits in which Mr. Vincent is concerned, but also all other suitors who may be placed in similar circumstances.

Es parte George Vincent, a Solicitor of the Court.

We understand that Messrs. Blackstock & Co. were accommodated with a room at the Law Institution on the morning of the fire, and on leaving the shelter so promptly and kindly offered them, they have taken occasion to express their warmest thanks, as well to the Society as to their professional brethren, for the invaluable aid they have received during their calamity, whereby they were enabled on the very morning of the fire to conduct their business, although at ten o'clock they were houseless, and had not a paper in their possession. The assizes, which had then commenced in various places, and were approaching in others, rendered it of great importance that not an hour should be lost in preparing records and other proceedings, the means of which were promptly supplied by the practitioners concerned in the respective cases, and thus difficulties which might have occasioned the postponement of many trials and produced great expense and inconvenience, were happily overcome. It is gratifying to know that so much good feeling existed amongst the solicitors, that the interests of the suitors in no respect suffered.

NEW BILLS IN PARLIAMENT.

BOUNDARIES OF MANORS.

This is "A Bill to authorize the identifying or ascertaining of the Boundaries of Manors and Lands, where such Boundaries are confused or unknown."

1. Meaning of certain words and expressions. "Manor," "Lands," "Entitled," "Doubts respecting the Boundaries," "Ascertaining the Identity," "Person," Number, Gender.

2. That from and after the thirty first day

of December 1838, which abolished such action and third years of the reign of his late Majesty, intituled, "An Act to authorize the identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations," shall be and the same is hereby repealed, except so far as relates to any matter or thing then previously done under the said act; and except so far as relates to any matter or thing then depending under the said act.

3. That after the 31st day of December 1838, it shall be lawful for every person beneficially entitled to lands, of which there shall be any "doubts respecting the boundaries," by deed to appoint a referee, in order to "ascertain the identity" of all or of such of the said lands as shall be mentioned or referred to in such deed; and every such deed shall be sealed and delivered in the presence of and shall be attested by two or more witnesses: Provided nevertheless, that where two or more persons shall be entitled, either as co-parceners, joint tenants or tenants in common, to any lands, such persons shall not be enabled in respect of such lands to appoint in any one case more than one referee: Provided further, nevertheless, that any thing herein contained shall not be deemed or taken to prevent the appointment of a sole referee.

4. That every referee appointed for the purposes of this act shall be a barrister at law, who shall at the time of his appointment be of at least ten years' standing at the bar.

5. Cases in which consents shall or shall not be necessary to the appointment of referees.

6. Persons, for the purposes of this act, to be considered entitled to manors or lands, notwithstanding the same, or the estates of such persons therein, shall be charged or incumbered.

7. That in each and every case in which a referee shall be appointed pursuant to this act, in order to ascertain the identity of any lands, and in which a referee shall be appointed pursuant to this act, in order to ascertain the identity of any other lands, and there shall be any doubts respecting the boundaries between the lands, to ascertain the identity of which such referees shall be so appointed, it shall be lawful for the referees (if more than one), or for the referee, in the case of a sole referee, and they or he are or is hereby required, in the first place, to inquire whether there are any doubts respecting the boundaries between the lands to ascertain the identity of which they or he shall be so appointed, and if they or he shall be satisfied that there are any doubts respecting the boundaries of such lands, then it shall be lawful for such referees or referee, and they or he are or is hereby required to make or cause to be made a survey, map and admeasurement of all such lands, or of such of them as they shall think requisite; and it shall be lawful for such referees or referee, by writing under their or his hands or hand, to summon persons to appear as witnesses before such referees or referee, and to examine such persons on oath (which oath

such referees or referee, and or, in writing, authorized and requisited to administer), and, by the same or any other writing under their or his hands or hand, to order to be produced before them or him all surveys, maps, deeds, books, papers and writings relating to such lands which shall be in the custody or power of all or any of the persons entitled to such lands, or any of them, or of any other person or persons whomsoever; and such referees or referee, after having to their or his satisfaction investigated and considered the evidence produced before them or him, shall and may make one or more award or awards in writing under their or his hands and seals, or hand and seal, and shall annex thereto a map or maps of such lands; and such award or awards and map or maps shall be made upon vellum; and such referees or referee, by their or his award or awards, shall ascertain the identity of such lands; and the award or awards of such referees or referee shall be binding and conclusive on the persons respectively appointing them or him, and all other persons whomsoever claiming or to claim any estate, right, title or interest whatsoever in or to such lands, or any of them, or any part or parts thereof; and the award or awards of such referees or referee shall be conclusive evidence that at the time of their or his appointment there were doubts respecting the boundaries of such lands.

8. Summonses and orders of referees under this act to be of the same force as those by the Judges of the Courts of Record.

9. Power to persons to appoint new referees in the place of those dying or resigning.

10. Power to referees, in case of their disagreement, to appoint umpires.

11. Appointments of referees and umpires and awards, to be binding, notwithstanding deaths of parties, or the ceasing, or alienation of their estates.

12. Guardians of infants, and committees of lunatics, to be substituted in the place of such infants and lunatics, for the purposes of this act.

13. Females Covert to concur in the appointment of referees by their husbands, who shall be entitled in right of their wives.

14. Appointment of referees to ascertain the identity of manors, and the awards of such referees, &c., to be entered on the court rolls in certain cases.

15. Appointments of referees to ascertain the identity of lands held of any manor; and the awards of such referees to be entered on the court rolls.

16. Consents of persons requisite to the appointment of referees to be given by the deed by which such appointment shall be made.

17. Consents by the homage, where requisite to the appointment of referees, shall be entered on the court rolls.

18. Powers of this act extended to collegiate corporations, and to trustees for charitable and other public purposes, and also to trustees, mortgagees, and other persons empowered to sell.

19. Appointments of referees by Arch-

...and the words of such referees
to be deposited in the office of the Registrar
of the Court of Chancery, &c. &c. &c.
(30) Expenses of proceedings under the act
to be paid.

PRACTICE OF RETAINERS.

To the Editor of the Legal Observer.

Sir,

In the case inserted in the last Legal Observer as to Retainers to Counsel, the question put, very properly and pointedly, is,—whether a King's Counsel, usually practising in the Court of King's Bench, is "justified" in accepting a special retainer in the Court of Exchequer, against a party for whom he has a general retainer, and with whom he has advised, without giving notice to such party. The opinion given by Sir James Scarlett, I observe, cautiously avoids answering the question affirmatively, but merely says that "it has been the constant practice to accept such retainers in other courts, and upon other circumstances."

I know not whether I must take it for granted that such has been the constant practice; for, had it not been for Sir James Scarlett's name, I should have doubted the fact. But I presume I may take it for granted, from the force of his opinion, that a counsel, under the circumstances stated, is justified only because it is the constant practice;—for I suppose no one will venture to say that he is justified on any other ground. The real question then is whether, if such be the practice, it is not time it should be discontinued.

The object of a special retainer is to secure the services of a particular counsel in a certain cause in a certain court. The object of a general retainer is to secure the services of a particular counsel in all causes and in all courts in which such counsel pleads. It is limited to no particular court, nor is any mentioned (as in the case of a special retainer) in the retaining ticket;—but it is understood that the counsel is not compelled by such retainer to go out of the court in which he ordinarily practises. If he practises therefore (as in the case before us) in the King's Bench, I cannot by this retainer insist on his going into either of the two other common law courts, although the proceedings in all are precisely similar. But surely my not being able to compel him to go there for me, is no reason why he should permit himself to be taken there against me, without giving me the opportunity of taking him there myself, if I think fit so to do. If he consents to go into any other court, then that court becomes a court in which he pleads; and consequently I have a right to his services there; otherwise I am defrauded of that for which I have contracted and paid.

There is scarcely a leading counsel in the present day who will not take briefs in each of the three Common Law Courts,—some of them only specially, but many in the ordinary course

of business. If Sir James Scarlett's opinion be adopted, this is the practice to operate? Are we altogether to forego general retainers? or are we to give a counsel, whom we wish to secure, a general retainer in each Court; that is to say, three general retainers instead of one; or, in other words, fifteen guineas instead of five? One of these two courses must be the consequence: for, according to Sir James's "constant practice," a simple general retainer is no longer of any use; and it is surely better to forego general retainers altogether, than to tolerate so oppressive an alternative.

I know full well that there are many barristers, who would indignantly resist every regulation that would appear to force them to act contrary to the strictest honor; and that there are others, who diffidently follow that which they are told is the practice, though they highly disapprove of it; both these classes would therefore gladly unite with our branch of the profession in putting the system of retainers on a more equitable footing.

I, for one, strongly object to the Court of Appeal, in which all cases of retainer are decided. The questions are generally raised by the clerks of counsel, and the decision is made by the counsel themselves,—who surely are parties too much interested in the result, to be impartial judges of the rules of decision. This law, however, ought to be simple, fixed, and certain;—not as they now too often are,—absurd, varying and doubtful. Ours, &c.

DISPUTED DECISION ON ANNUITY ACT.

Sir,

I have been a constant subscriber to your valuable work from its commencement, and I have not hitherto intruded on your columns. Perhaps, therefore, you will now allow me a small space in them.

By the 53 Geo. 3, c. 141, it is provided, that all annuities shall be enrolled, with certain exceptions enumerated in the 10th section of the act.

By a deed, made since that act, a person, entitled to receive from trustees, (in whom the fee of an estate was vested), the rents and profits for life, in consideration of 100*l.* then due, or admitted to be due to the grantee, for expenditure in the maintenance of the grantor's children, and for the grantee's liability in respect of their future maintenance, granted an annuity of a specific sum out of the said rents and profits, to cease as to part when the children should cease to be under the care and expense of the grantee, but, as to the remainder, to continue during the grantor's life, to enable the grantee to keep up any insurance on the grantor's life for the grantee's said expenditure, or "on any account whatsoever."

Having carefully looked at the cases ex-

cepted from the necessity of involment by the Annuity Act, it appeared to me impossible for human, or even legal, ingenuity, to discover that the present cases forms one of them; and yet an eminent conveyancer has given his opinion that it does—on the authority of *Frost v. Frost*, 3 B. & Ad. (K. B.) 612, n., and the cases there referred to.

I beg to refer to a previous decision (*Kelly v. Ambrose*, 7 Term Rep. 551), which seems much more consonant with the spirit and letter of the act.

I have not set out the act nor the cases, that I may comprise my observations in the shortest possible space; but I should feel obliged by some of your learned readers referring to them, and giving their opinion whether the annuity, under the circumstances explained by me in the first instance, requires involment to render it valid?

AN INQUIRER.

SELECTIONS FROM CORRESPONDENCE.

EXAMINATION OF ARTICLED CLERKS.

Sir,

I am surprised at the letters appearing in your journal respecting the examination of solicitors. Is it really possible that a solicitor of thirty year's standing, is not competent to answer the questions put at the Hilary Examination? If such is the case, I can but pity his clients; but I am rather inclined to believe, that the letter with that subscription, and many others complaining of the severity of the Examination, are the works of some ingenious young gentlemen who wish to soften their own examinations. For my own part, I have never heard or seen any complaints of the undue strictness of the Examiners, elsewhere than in your pages; and I must, therefore, doubt the universality of the opinion stated by "An Old Subscriber," to be entertained by the profession.

I believe the ground of all these complaints is the regret, which some few articulated clerks feel, at having their dishonest intentions of imposing on the public in some measure frustrated. And what other name than dishonesty can be applied to an endeavour to palm off ignorance upon persons who suppose that they are reaping the produce of five years' honest application to business.

Does your Old Subscriber think it absolutely necessary that a young man should study at a pleader's chambers, to find out the different sorts of writs for commencing personal actions, and the cases to which they are respectively applicable; or to discover what notice to quit is necessary to be served on a tenant from year to year? These are two questions which present themselves to my memory as having been put in Hilary Term last. I may be allowed to deny one of the assertions contained in your Old Subscriber's letter: I obtained my certificate in Hilary Term last,

and certainly did not find if many questions calculated only to mislead a young man, and any thing to produce "a nervous excitement."

Your Old Subscriber, however, thinks that after five years, the examination should be much more severe. I suppose he knows of some very good reason why a person, whose articles expire before these five years, will be able to practise as an attorney with less knowledge of the law, than one whose articles expire afterwards. If there is no reason of that kind, I cannot see what right those clerks who, during their articles have neglected their duties, have to be put on a par with those who have attended to them. It would be a premium to dishonesty.

J. A. D.

PERPETUAL COMMISSIONERS.

Sir,

No doubt when the Attorney General's bill to abolish fines and recoveries was prepared, it was intended that the new assurance should be as convenient to parties, and as cheap as possible. It, however, excluded the attorneys as a body from their legal birthright of taking acknowledgments of married women, and it is well known that the appointment of perpetual commissioners was thrust upon the Lord Chief Justice of the Court of Common Pleas, against his wish and inclination. Unfortunately for the public at large, this excellent and learned Judge entertained the opinion, that the few men he appointed as commissioners, the better and more conveniently the business would be done. So that at first he appointed only about 1,000 for England and Wales—a direct additional degradation upon the profession as a body, and an infliction of expense in travelling alone of parties and commissioners of an enormous amount. This has been remedied in some degree by increased appointments; but yet both the public and the profession suffer to a very great extent, from the inconvenience as well as the expense of travelling.

The other day, twenty-two married women joined in one acknowledgment, when the fees alone of the two commissioners came to 15*l.* 6*s.* 8*d.*, besides the travelling of parties, &c. The fees, under the old system, to the commissioners, would have been two guineas, and the cost of a fine for this small property, about 10*l.* or 12*l.*

Upon the whole, I am told by country practitioners, capable of judging, that the new system is equally expensive with the old, and ruinously inconvenient to every body. This is a state of things never intended, and which, therefore, ought to have a remedy.

I fully agree with your correspondents, that there can be no good reason why every man who is fit to be an attorney, should not also be a perpetual commissioner. It is admitted that three or four times the number, equally respectable, might be appointed: and yet the Chief Justice cannot be induced to see the positive necessity of relieving the public and the profession from the grievous consequences of the present limited system.

I would strongly recommend all country att-

coroners, and the other Justice know what happens daily at the expense and inconvenience, and not to cease addressing him until a proper measure of justice be obtained.

However excellent a public man may be, he is not thus entitled to disregard the opinion of the public and the profession, and one can only be astonished that so good a man should have done so for such a length of time.

A TOWN ATTORNEY.

PARLIAMENTARY RETURNS.

CORONERS IN ENGLAND & WALES.

(continued from p. 429).

Kent.

There are five coroners for the county; they are elected by the freeholders of the county.

I have no means of answering the other inquiries, the poll books of elections for coroners not being deposited in this office.

12 December 1837. H. A. Wildes.

Lancaster.

We understand there has been only two occasions in which any polling has taken place at the election of a coroner, in this county, since the year 1800; the first, upwards of 30 years ago, and the other more recently; but at this distance of time, and the numerous changes in the office of sheriff we cannot furnish you with the number of votes polled, nor the number of days the contests lasted on the two occasions.

Richardstone & Wilson, Under Sheriffs.

There are six coroners for the county, elected by freeholders.

There is a coroner for each of the boroughs of Liverpool and Wigan, appointed pursuant to the act of 5 & 6 Will. 4, c. 76, s. 62.

There is a coroner for each of the following liberties and manors, viz.:

The liberty of Furness, appointed by the Duke of Buccleuch.

The manor of Walton-le-Dale, appointed by Sir Henry Bold Houghton, bart., lord of the manor.

The manor of Hale, appointed by John Ireland Blackburne, esq., lord of the manor.

The manor and liberty of Prescott, appointed by the jury of the manor.

E. Gorst, Deputy Clerk of the Peace. Preston, 15 December 1837.

Leicester.

There are two coroners appointed by the said county, elected by freeholders.

There has been no contested election for the office of coroner for the said county since 1st January 1800.

Borough of Leicester.

There is one coroner for the said borough, appointed by the town council of the said borough.

Thomas Freer, Clerk of the Peace. 2nd January 1838.

There are three county coroners resident and acting within the parts of Lindsey, and appointed by the freeholders of the county of Lincoln; and there are two other county coroners appointed in like manner, who reside out of the parts of Lindsey, but regularly hold inquests within the said parts.

2. There is one coroner appointed for the city of Lincoln, by the council of the city under the provisions of 5 & 6 Will. 4, s. 76, s. 62.

2. There have been only two contested elections for the office of coroner within the parts of Lindsey, since the 1st January 1800, as far as I can ascertain; one in December, 1827, when 309 votes were polled, and the contest continued two days; the other in January 1831, when 2,414 voters polled, and the contest continued eight days.

I have confined my return to coroners resident or acting within the parts of Lindsey, the division for which I am clerk of the peace; but such coroners, although acting within limited districts, have jurisdiction throughout the whole county, and are elected by the freeholders of the county at large.

John H. Halliday, Clerk of the Peace. 13 December 1837.

Parts of Nottingham.

Charles Mastin, residing at Boston, one of the coroners for the county of Lincoln, elected 22d February 1815. Elected in open county court, at the castle of Lincoln, by open election by freeholders; 323 votes polled for Charles Mastin, and 36 for the other candidate.

Samuel Edwards, residing at Spalding in the parts of Holland, in the county of Lincoln, one of the coroners for the county of Lincoln; elected 22nd June 1809. Elected in open county court, at the castle of Lincoln, by open election. Very few freeholders polled, Samuel Edwards being the only candidate.

Fra. Thirkil, Clerk of the Peace for Boston, 18 December 1837. the said Parts.

Parts of Kesteven.

There is but one coroner residing in the division of Kesteven: Mr. George White, of Grantham, whose election took place more than 40 years since, and without opposition.

12 December 1837. W. Forbes.

Middlesex.

Two coroners; elected by freeholders, April 1804. The sheriff states, that his memorandum does not disclose whether this election was contested.

One, the coroner of the liberties of the duchy of Lancaster, in Herts, Middlesex, and Surrey, appointed by the Crown.

Feb. 1816 - 4978 votes - 4 days contest.

1830 - 7204 votes - 10 days contest.

H. O. Selby, Clerk of the Peace.

City of London and Borough of Southwark.

1 On the 1st January 1800, Thomas Shelton esq., held the office of coroner for the city.

of London, and the town and borough of Southwark, to which office he was elected, on the 24th July 1788, without contest, by the Lord Mayor, Aldermen, and commoners of the city of London in common council assembled.

On the decease of Mr. Shelton, William Lewis Newiman, esq., then city solicitor, was on the 14th July 1829, appointed to perform the duties of the office of coroner until the further order of the court; and, on the 22d day of October following, William Payne, esq., was elected by ballot during the pleasure of the court, and subject to an annual election. On that occasion there were five candidates, viz., Henry Dunkin Francis, Richard Gude, William Payne, Joseph Smith, and Josiah Wilkinson, esquires, and the number of votes were, for

Henry Dunkin Francis	- - - 60
Richard Gude	- - - 38
William Payne	- - - 78
Joseph Smith	- - - 12
Josiah Wilkinson	- - - 25

and Mr. Payne has since been annually elected by the court of common council, without contest.

The election and appointment of coroner for the city of London and for the town and borough of Southwark, is in the corporation of the city of London, by charters, confirmed by acts of parliament.

Henry Woodthorpe, Town Clerk of London.
14 December 1837.

City of Westminster.

There is but one coroner for the city and liberty of Westminster, and he receives his appointment from the Dean and Chapter of the collegiate church of St. Peter, Westminster; and consequently there has not been any contested election for that office since the 1st January 1800.

John P. Gylby, Deputy Clerk of the Peace.
13 December 1837.

Liberty of the Tower.

The present coroner for the liberty of her Majesty's Tower of London, is Thomas B. Ricketts, esq., barrister at law, who was appointed to that office in 1818 by General Loftus, the late Lieutenant-governor of the Tower, in the absence of the Marquis of Hastings, the then Constable.

D. H. Stable, Clerk of the Peace.
11 December 1837.

Monmouthshire.

Two for the county, elected by the freeholders.

One for the hundred of Chepstow, elected by the Duke of Beaufort.

No contested election for the office of coroner within this county since 1st January 1800.

Alex. Jones, Clerk of the Peace.
12 December 1837.

Norfolk.

Edward Press and John Pilgrim, for the county at large.

Francis Thomas Quarles, for the liberty of

the duchy of Lancaster; appointed by letters patent under the seal of the duchy. (16th July 1837.)
Daniel Culver, and James Muscett, for the liberty of the Duke of Norfolk; appointed by the Duke.

Martin Coulcher, for the hundred of Clackclose; appointed by Sir Thomas Mure, Bart.

William Townley, for the half-hundred of Clackclose; appointed by Richard Grewes Townley, Esq.

Having no official communication with the municipal officers of Norwich (which is a county of itself), or with the boroughs locally situated within the county of Norfolk, I know not, otherwise than by report, who are the coroners there; nor are there any documents in my office which shew the number or dates of the contested elections for the office of coroners for this county.

Robert Copeman, Clerk of the Peace.

[To be continued.]

SUPERIOR COURTS.

Lord Chancellor's Court.

PRACTICE.—NEW ORDERS.—MASTER'S DUTY.

The Master, in granting an order upon a second application for further time to answer, ought to state shortly the grounds on which he granted the indulgence. The Court will not give costs of a motion to discharge an erroneous order of the Master.

This was a country cause. The defendants obtained an order of course for further time to answer the plaintiff's bill. Their second application for further time to answer was contested before the Master, and he granted them until Hilary Term next, "by reason of the peculiar nature, character, and circumstances of the suit." The principal parties are father and son.

Sir Charles Wetherall moved to discharge the Master's order for time, because the order did not shew on the face of it, the grounds on which the further extension of the time to answer was granted, as was required by the 21st of the New Orders for regulating the practice in the Master's office under the new jurisdiction given them by the recent act. The defendants had ten weeks already as of course under the 8th of the general orders of 1833. They had afterwards, from the Master, on the 12th of November, a further order for time; and on the 5th instant, the Master, on further application to him, made the order now complained of, without stating in the body of the order the special grounds of the indulgence:—such as obtaining documents from Scotland or Ireland, &c.; but the terms used by him were so vague, that it would require an alchemist or soothsayer, or one skilled in the occult sciences, or divination, to extract from the order the Master's reasons. The Master, in giving time generally, put the party applying under terms. The question was, could the Court see on the face of the order,

the grounds upon which the further time was granted? The order is a nullity, and an attachment ought to issue for want of an answer.

Mr. Wakefield and Mr. Wright were on the same side.

Sir Wm. Howard, Mr. Wigram, and Mr. Turner, for the defendants, opposed the motion. The former order of the Master for three weeks' further time to answer, was in the same terms, and was not objected to. The affidavits on both sides which were read before the Master, disclosed fully the reasons for granting further time; and these affidavits being part of the proceedings, are made part of the order which refers to them, the Court, therefore, might look to them for the reasons.

The Lord Chancellor was of opinion, that he could not so refer to the affidavits. The Master was bound by the terms of the orders regulating his jurisdiction, "to state shortly the circumstances." It was important for the sake of other suitors, to put the true construction on this order. He would discharge the Master's order, with leave to the defendants to go back to the Master to amend his order. No proceedings should be taken against the defendants until the Master had the matter again before him to put his order in a proper form. Let proceedings be stayed until Wednesday next.

Sir Charles Wetherall applied on the Wednesday for costs. The defendants had, after leaving Court on the former day, declined to take the order for time. The plaintiff was entitled to the costs of the application to discharge the former erroneous order.

The Lord Chancellor did not think he ought to give costs against the defendants for the misarrangement of the Master.

Bushnell v. Bushnell and Graham, Sittings at Lincoln's Inn, December 13th and 20th, 1837.

Queen's Bench.

[Before the Four Judges.]

COVENANT.

Where a party enters into a positive covenant to do a certain thing, he cannot afterwards set up in answer to an action for the non-performance of that covenant, a difficulty interposed by the authority of a third person.

At all events he must shew that such difficulty is created by a positive enactment of law, though even if he could shew that fact, quare whether he could thereby discharge himself from his covenant.

Covenant against executors on the covenant of their testator. By an indenture made between John Robinson (since deceased), of the one part, and the plaintiff of the other part, the said J. Robinson covenanted for himself, his executors and administrators, that he or they would within three months from the date of the indenture, or six months after his decease, invest in the corporate name of the churchwardens of the parish of Warmingford,

the corporate name of the vicar of the same parish, and the corporate name of the Archdeacons of Winchester, so much stock as should produce the clear annual sum of 35*l*. The money so invested was to be applied, amongst other purposes, to the support of a school. The defendants, the executors of J. Robinson, prayed over of this indenture of their testator; and then demurred generally to the plaintiff's right to maintain the action.

Mr. Channell, in support of the demurrer.—The covenant here is void, for it is impossible to be performed. The stock cannot be invested in the corporate names of these parties, but if it could they are not able to take in perpetual succession. The object of the indenture is to ensure the perpetual succession to this money. But these parties do not form a corporation for this purpose; and, therefore, cannot take under the indenture, and consequently cannot maintain any action against the defendant for not investing. In the first place, churchwardens are only a corporation for a special purpose, under the authority of the 9 Geo. 1, c. 7, s. 4, and the 41 Geo. 3, c. 23, s. 9. They become under these statutes incorporators merely for the purpose of protecting the property of the parish; but if damage is done to that property in the time of one churchwarden, and his successor brings an action, the damage must be laid as damage done to the parishioners.^a But where this special reason does not exist, the churchwardens do not constitute a corporation. *Per* Lord Kenyon, C. J., in *Wishall v. Gartham*.^b But there is another difficulty,—the bankers refused to invest in corporate names. The covenant was to invest within three months in the names of the archdeacon, the vicar, and the churchwarden. The law will only take notice of known corporations, and there is no corporation composed of such persons. Then suppose the covenant to be not only impossible, but impossible at the time it was entered into, the action on it does not arise. *Shep. Touch. Condition, 132*. It is admitted that, as a general rule, where the law casts a duty on a party, and without any default in him, he is disabled to perform it, the law will excuse him; but where a party enters into a contract to do a particular thing, the impossibility of performing it will not excuse him,^c but that is only in cases where the impossibility arises after the making of the contract. The cases on the subject of conditions shew that this action cannot be maintained. A condition may be precedent or subsequent, or it may be incorporated in a particular instrument. Where it is separable at all from the rest of the instrument, the Court will enquire whether it is void or not. In the case of a bond, if the condition is void, the Court will hold the bond

^a 2 Saund. 47, C.; Gibs. Cod. 215.

^b 6 Term Rep. 396.

^c *Paradine v. Jane*, 10 Heyn. 27; *Brecknock Canal Company v. Pritchard*; 6 Term Rep. 750; *Atkinson v. Ritchie*, 10 East, 304.

to be single. If, in the case of the vesting of an estate, the condition is precedent, and is not performed, the estate will not vest; if it is subsequent, the estate will not be divested. With regard to estates, it is laid down that "if the thing covenanted to be done is in the nature of it impossible, the covenant is void. And generally where the matter being in condition will make the condition void, because it is against law, there, it being on a covenant, will make the covenant void." Mr. Preston in his edition seems to dissent from the text, but produces no authority to justify the dissent. In *Pullerton v. Agnew*,^a it was said, "where the condition is part of the obligation itself, and incorporated therewith, if the condition be impossible, the obligation is void." Chief Baron Comyn^e cites this passage, which shews that the doubt of Mr. Preston is not justified; and *Shelley's case*,^b shews that covenant and condition must be put upon the same footing.

Mr. *Theiger, contra*.—The declaration is good, and the action is maintainable. The thing covenanted to be done is not impossible; but assuming that it is so, it does not lie in the mouth of the covenantor to make that objection in an action for the breach of the covenant. The distinction, in the case of a covenant, taken between a duty cast on the party by the law, and one taken on himself by the party, exists fully to this extent, that, if the thing to be done becomes impossible, the party is exonerated in the first instance, but he is not exonerated in the second. The reason is as given in the books quoted on the other side, that the party in the last case made his own contract, and should have considered all the circumstances before he made it. That reason does not exist in the case of a condition, and if, without his default, the condition becomes impossible, the party is absolutely exonerated. There is, therefore, a good reason for the doubt expressed by Mr. Preston upon the ground of the distinction, which, in his opinion, exists between a condition and a covenant. The distinction is indeed clear. A condition is either to create, enlarge, or defeat an estate. If it is a condition precedent, it must be performed before the estate can vest; if it is impossible to be performed, the estate never vests; if it is a condition subsequent, then as the estate must continue till it is performed, the estate can never be defeated. But all this proceeds on the ground that the condition is not the contract of the party himself. The covenant here is his contract. The covenant is said to be impossible, because the bank will not take an investment in corporate names. But the Court will not take notice of that, even if it should be the fact; besides which, it is clear that if a man covenants for the act of a stranger, he must compel performance of it, or pay damages, *Doughty v. Neal*.^c It may be admitted,

that the vicar cannot take chattels in succession; but from the earliest times, a churchwarden has been a corporation for the purpose of taking goods; and it is no objection that this stock would go in succession to different churchwardens, for they would be tenants in common with the other parishes.^d It is no objection for the defendant to consider in what way the money will afterwards go; it is his duty to invest it. This objection, therefore, does not properly arise here. The defendant is only at liberty to shew that there is an impossibility to perform the covenant; and if that be shewn, then the question arises, whether he is not still liable on the covenant? But that has not been shewn in this case. But assuming that he may raise the other objection, there is clear that it is not well founded. It is said: "If a lease for years be made to a bishop and his successors, yet his executors or administrators shall have it in *auter droit*." The same position was adopted in *Merchase v. Bennett*.^e It is plain, therefore, that these persons are not incapacitated from taking the stock, and when taken, it would go to their executors and administrators under the trust. As to the churchwardens, they are a corporation for the purpose of taking the goods of the parish. They may maintain trespass for taking away the parish books in their custody.^f [Lord Denman.—But the books being in their custody, they could maintain trespass without being a corporation.] But they must be made good for the damage would be alleged to be their damage of the parishioners. As to personal things, they are a corporation by the common law; but contrary as to land.^g But this is chattel to be given to a sole corporation for a charitable purpose. There can be no doubt that for this purpose the churchwardens are a corporation. *Price v. The Archbishop of Canterbury*.^h was such a bequest, and it was held good. There the residue of the personal estate, subject to the debts, and to payment of a sum of 93*l.*, was decreed to be well given to the archbishop for the time being in trust for charitable purposes. In *Mavor v. Nixon*,ⁱ a fund given to churchwardens and overseers, to be by them distributed for the uses of their will, which were for the benefit of a charitable purpose, was held to be properly given. The result of the cases is, that whatever may be the rule of law as to chattels not going to a corporation for perpetual succession, that rule is subject to an exception where the fund is to be applied for charitable purposes.

Mr. *Chamuel* in reply.—The fact that the stock, when once vested, would go to the executors and not to the successors, shews that

^a Co. Litt. 190 a.

^b Co. Litt. 46 b.

^c 1 Clark & Finn. 527.

^d 8 Ed. 4, p. 6, pl. 5; 37 H. 6, p. 30, pl. 11; Bro. Abr. Guardian d'Eglise, fol. 7, p. 4.

^e Id. Corp. & Cap. 55 a.

^f Bro. Abr. Exec. al Use, 29.

^g 14 Yes. 364.

^h 2 Younge & J. 60.

^a 1 Salk. 172.

^b Com. Dig. Condition, D. 8.

^c 1 Rep. 98.

^d 1 Saund. 214.

the party would take in his individual and not in his corporate capacity. The defendant here has no remedy over, and therefore cannot be made answerable for the default of a stranger. He could maintain no action against the bank for refusing to invest. The case of *Price v. The Archbishop of Canterbury* was by consent of parties, and was in a Court of Equity, which may interfere to compel performance by a stranger, in a manner that cannot be done in this Court. If this Court could bring in the bank as a party to this suit, and make a decree for performance, there would be an end of the difficulty. Then again, even supposing that churchwardens are a corporation for the purpose of protecting parish goods, this stock does not belong to the parish, but is intended for a particular charity, so that their corporate character, which exists only for a particular purpose, will not avail them here.

—*Lord Denman, C. J.*—This is a covenant in an indenture between James Robinson, deceased, and the Vicar of Warningsford, and this action is brought against the defendants as his executors, for not having invested enough to produce a sum of 35*l.* to them,—plaintiff and two other persons, and their successors. In answer to the action, the defendants say, We are not liable, for we cannot invest the money in the way required; and if we did, it would not go to the successors of the parties in favour of whom the investment was made. It is possible, that the law may interfere with the future succession of the property; but that is nothing to the defendants. They have undertaken to do a certain thing, and they must do it. The way in which the law may deal with the fund afterwards, does not relieve them from the necessity of investing the fund now. The object of the investment here, namely, the maintenance of a school, might however, get rid of the difficulty of the future disposition of the money, by enabling the parties to apply to Equity.

Mr. Justice Littledale.—This is a covenant to invest so much money as will produce 35*l.* a year. The defendants say, that they are not able to invest the money in the corporate names of the parties. Let them shew that. I do not say that that would be a good plea to the action; for though the Bank might refuse such investment, it is not contrary to law; but before we decide whether that answer would be sufficient, they ought to shew the existence of the supposed impossibility. As there is nothing contrary to law in the covenant, and as the parties are existing parties, though they may not form a corporation for this particular purpose, the defendants must take the consequences of not performing the covenant into which their testator has entered. If the law will not give these persons a permanent interest in the fund, that will not excuse the defendants for not investing it.

Mr. Justice Williams.—I am of the same opinion. There is no change of circumstances between the time of entering into a covenant and the time of action brought, that can release the defendant from the duty of perform-

ing it. But here the thing to be done is possible on the face of the covenant, and there is nothing to shew that there is an illegal covenant, and that the law will not enforce it.

Mr. Justice Coleridge.—This is a case in which the testator has voluntarily brought himself under an obligation which he has not performed. An action is brought against the executors, and the answer to the action is that at the time of the covenant there was a legal impossibility to perform it. But even if that would be an answer, and I do not say that it would, the defendants have not shewn such impossibility to exist in fact. Each of these different persons is a corporation. They have corporate names, and unless there is a difficulty at the Bank, the thing covenanted for can easily be done. Whether being done, the purpose intended will be afterwards answered, is another matter, into which we are not called on to enquire at this moment. Can the thing undertaken be performed? It is no answer to the action to say, that the Bank for some reason of its own, will not give leave to have the investment made. It should be shewn that by the provisions of some act of parliament the Bank may not permit it. For want of shewing that, I do not think that the mere allegation that the Bank does not allow of such an investment, is an answer to the action.

Judgment for the plaintiff.—*Tusnell, clerk, Vicar of Warningsford v. Constable and another, H. T. 1838. Q. B. F. J.*

Common Pleas.

COURT OF REQUESTS.—COSTS.—AFFIDAVIT.

The Westminster Court of Requests Act, 6 & 7 W. 4, c. 137, does not entitle a defendant, liable to be summoned, to apply for the costs of a trial had in a Superior Court.

An affidavit in support of an application to deprive the plaintiff of costs, on the ground of the trial having been had in a Superior Court, should allege in the words of the statute, that the defendant is "residing in or inhabiting within the jurisdiction of the Court."

This was a rule calling on the plaintiff to shew cause why all proceedings in this action should not be set aside, and why the plaintiff should not pay the defendant's costs in the cause, and the costs of this application; and why all further proceedings should not be stayed. The discussion on the rule nisi was reported p. 271, ante.

Wilde, Serjt., now shewed cause, and contended, that the affidavit on which the rule had been obtained, was insufficient to entitle the defendant to any assistance at the hands of the Court. It alleged that the defendant before and at the time of the commencement of the action by the plaintiff, kept and used a counting house within the city and liberty of Westminster, and sought a livelihood in the said city and liberty, by letting out horses and carriages for hire, and also by trading and dealing in horses, and that he was liable to be summoned and warned before the commis-

sinner of the Court of Requests for the said city and liberty. The allegation in the affidavit was merely that he kept a counting house, and that he carried on a trade; but it was not stated that the counting house was kept for the purpose of carrying on trade, or that it was used for that purpose, but it might be a mere room partaking in no degree of the character of a counting house. It was not stated where the dealing which was alleged was carried on; nor where the counting house was situated. The defendant was entitled to plead his liability to be summoned, if he intended to take advantage of the objection; and his not having done so, would deprive him of the right to expect the Court to look upon him with any degree of favor. It was, besides, quite competent to him to have moved for a stay of proceedings, before the cause went down for trial, which would have saved much expense, if his claim was well founded; but he had neglected to do so, and the Court would therefore view his present application as an extreme proceeding. The affidavit besides did not allege the amount for which the action was brought, nor did it state that it was for a "debt or demand," within the terms of the statute.

Kelly, contra, contended, that the defendant's right to come to the Court was sufficiently made out, and that sections 44 and 86 of the statute were co-extensive. Section 44 was as follows: "And be it further enacted, that from and after the 10th day of October next after the passing of this act, it shall be lawful for any person or persons, whether such person or persons shall or shall not reside within the city and liberty of Westminster, or that part of the Duchy of Lancaster which adjoineeth thereto; and for all bodies politic or corporate, who now have or hereafter shall have any debt or debts, demand or demands, upon any contract or agreement, or for or in respect of wages or rent, or otherwise howsoever, (which the said commissioners are by this act enabled to determine, and except such as they are expressly prohibited from determining) owing or due to, or claimed or demanded by such person or persons, bodies politic or corporate, in his, her, or their own right, or in the right of any other person or persons, to whom he, she, or they shall be executor or administrator, guardian or trustee, or due and owing to him as collector of any rates or taxes, or as clerk or other officer to any commissioners or to any club or friendly society, duly associated and constituted, or in any other manner whatever, (except as aforesaid), and for which debt or demand he, she or they shall claim any sum of money from any person or persons whomsoever, residing or inhabiting within the said city and liberty of Westminster, or that part of the Duchy of Lancaster which adjoineeth thereto, or keeping or using any house, warehouse, wharf, quay, counting house, chambers, lodging, office, shop, shed, stall, or stand, or employed or seeking a livelihood, or trading or dealing within the same city and liberty and part of the Duchy, to apply to the clerk of the

said court for the time being for his assistance, who shall make out and deliver to the said high bailiff, and assistant high bailiff for the time being, a summons, written or printed, or partly written and partly printed, directed to such debtor or debtors expressing the sum demanded of him, her, or them, the nature of the demand, with the name of the party or body demanding the same, and requiring such debtor or debtors to appear at a certain time and place to be mentioned in such summons, before the commissioners of the said court, to answer such demand or demands; and such high bailiff or assistant bailiffs shall in due course serve or cause such summons to be served on such debtor or debtors, either personally or by leaving the same with his, her, or their servant, or other person belonging to him, her or them, or the master or mistress of the dwelling house, or at the wharf, quay, lodging, place of abode, warehouse, counting house, chambers, office, shop, shed, stall, stand or other place of dealing, trading, or working, or resort of such debtor or debtors being within the jurisdiction of the said court, two clear days at the least, previous to and exclusive of the day appointed in the said summons for the hearing thereof; and upon the appearance of the debtor or debtors, the said commissioners present in court, (such number not being less than by this act directed), are hereby empowered and required to make due enquiry concerning such demands, and make such orders and decrees thereon, and pass such final sentence or judgment thereupon, and award such reasonable costs of suit, as to them shall seem most agreeable to equity and good conscience; and they may order and direct the payment of any such demands to be made either at one sum at once, or by instalments, &c." Then the 86th section provided, "And be it further enacted, that no action or suit for any debt not exceeding the sum of forty shillings, and recoverable by virtue of this act in the said Court of Requests shall be brought against any person residing or inhabiting within the jurisdiction thereof, in any other Court whatsoever, provided always that nothing herein contained shall destroy, limit, or prejudice the jurisdiction of His Majesty's Courts of Record at Westminster, or other courts, in cases wherein the debts shall exceed the sum of 40s.; but the said courts respectively shall have the same powers, privileges, and jurisdiction, as they had before the passing of this act." The keeping a counting house therefore, mentioned in the 44th section, was of the same effect as "residing and inhabiting," mentioned in the 86th section. Both terms otherwise would not have been used, for "residing," he submitted, meant living within the jurisdiction, while "inhabiting" meant carrying on any business or trade, and comprehended all the modes suggested in the 44th sec. The present rule did not call on the plaintiff to pay the defendant's costs; but its object was to relieve the defendant from costs. It was impossible for the defendant to come to the Court before the

trial, and say that the plaintiff's legal claim would be found to amount only to 10s., because its amount was to be ascertained. The words used in the affidavit comprehended the meaning intended to be conveyed by the term "inhabiting," mentioned in the 86th section.

Tidal, C. J.—You do not use either of the words in the act, in the affidavit, and I think therefore, that it is anything but satisfactory.

The other Judges concurred.

Rule discharged.—*White v. Seffert*, H. T. 1838. C. P.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assents.

30 March, 1838.

Disasters' Declaration.

Custody of Insane Persons.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors against the Property of Debtors, and for abolishing Imprisonment for Debt, except in cases of Fraud. Lord Chancellor.
[In Select Committee.]

For regulating Charities. Lord Brougham.

[This bill stands for second reading.]

For Exchanging Lands in Common Fields.

Lord Ellenborough.

[In Committee.]

To remove doubts as to the validity of oaths, and to substitute affirmations. Lord Denman.

[This bill waits for second reading.]

For indemnifying Persons who have not qualified, and relieving Attorneys.

[This bill has passed.]

To prevent the holding of Vestries or other Meetings in Churches. Bishop of London.

[For second reading.]

House of Commons.

ADMINISTRATION OF JUSTICE.

For the improvement of County Courts of Civil and Criminal Jurisdiction.

Lord John Russell.

[Leave has been given to bring in this bill.]

To provide for the access of Parents, living apart from each other, to Children of tender age. Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright

Mr. Serjt. Talfourd.

[For second reading April 25.]

To amend the Law of Patents, and to secure to individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Tenements, after due Determination of the Tenancy. Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to hold a Court for the Recovery of Small Debts. Colonel Seale.

To make better provision for collecting and distributing the estates of persons found bankrupt under Commissions and Fiats directed to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in Ireland and Scotland, Scotch Judgments effectual in England and Ireland, and Irish Judgments effectual in England and Scotland. Mr. Mahony.

To establish a Court for the Recovery of Small Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill stands for second reading.]

For the Recovery of Small Debts in the Borough of Marylebone.

Lord Teignmouth.

[For second reading.]

To provide for International Copyright.

Mr. P. Thompson.

To regulate the office of Sheriff in England and Wales. Col. Davies.

[In Committee.]

For the better Regulation of the Thames Watermen. [For second reading.]

For the better Regulation of the Profession of Attorney and Solicitor in Ireland.

Mr. O'Connell.

[For second reading.]

LAW OF PROPERTY.

To facilitate the Enfranchisement of Lands of Copyhold and Customary tenure.

To amend the Law relating to Lands held by Copy or Court Roll.

To authorize the identifying the Boundaries of Manors.

[These three bills are referred to a Select Committee. For a list of the names see p. 394, ante.]

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases. The Attorney General.

[These two bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagees in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland. Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal. Mr. Lynch.

[This bill stands for second reading.]

To amend the 13 G. 3, for the better Cultiva-

tion, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To amend the 6 & 7 W. 4, for facilitating the Inclosure of Open and Arable Fields in England and Wales.

Lord Worsley.

[This bill has been withdrawn.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading on 27th April.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel.

Mr. O'Connell.

For the suppression of Trading on Sunday.

Mr. Plumtre.

[This bill is in committee.]

LAW OF PARLIAMENTARY ELECTIONS.

To prevent threats to voters, or attempts at intimidation.

Mr. Slaney.

[This bill stands for second reading.]

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament.

Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill is in committee.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

[In Committee.] Mr. Warburton.

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the

Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

[For second reading.]

Mr. Hume.

THE EDITOR'S LETTER BOX.

The plaintiff's attorney in the case of *Holland v. Heath and Griffiths*, reported p. 379, observes that our statement "that Mr. Erle of counsel for the plaintiff, objected to the panel of talesmen trying this cause, as they were all liable to serve on the annoyance jury, and that that circumstance disqualified them from sitting as talesmen in this cause," is rather incorrect, the fact being, that Mr. Erle objected to the whole of the jury of talesmen who should happen to be on the Court of Burgesses of Westminster, and in whom "the right of appointing the defendants as their officers, and of confirming the finding of the annoyance jury in fining the plaintiff, exists," and to whom also one half of the fine goes: and on this objection being stated, Lord Deane allowed it, but stated, as our reporter has it, that the circumstance of the talesmen being liable to be summoned and serve on the annoyance jury, certainly did not disqualify them from trying the cause—the Court of Burgesses and the annoyance jury being two distinct bodies; and indeed it was ordered by Mr. Justice Littledale in a previous part of the case, that none of the Court of Burgesses should be on the jury to try the cause.

The same correspondent informs us in reference to a note at p. 384, relating to the new rule about special juries, that Mr. Justice Littledale decided at chambers two days after the promulgation of the rule, that the rule applied to all special juries applied for by defendants, and as the defendants applied for it, our correspondent attended that learned Judge, on a summons taken out by the defendant's attorney after the refusal of the Master to draw up a rule for a special jury in the former mode. This decision of the Judge confirms our statement.

The Letters of "Students" and "An Old Subscriber," are under consideration.

We beg to put it to our correspondents, whether enough has not been said on the mode of conducting the examination? We had rather not be driven to refuse any further discussion on that subject, but propose that it should be adjourned for some time to come, unless any pressing points should occur.

A correspondent who calls on us to assign reasons for not giving his letter unaltered, should bear in mind that we must consult the wishes of our readers as well as our contributors. We make no alteration that does not appear material to the general interests of the profession.

The Legal Observer.

SATURDAY, APRIL 14, 1838.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

Horat.

MR. SERJEANT TALFOURD'S COPYRIGHT BILL.

THE Bill which Mr. Serjeant Talfourd has introduced for the Amendment of the Law relating to Copyright is not likely to proceed without considerable interruption. The booksellers are resolved to oppose it with all their strength; and the numerous persons under their dominion—printers, compositors, and certain writers recreant to their craft, follow in their train. On the other side, the great body of authors range themselves—and deadly, no doubt, will be the conflict. A shower of pamphlets already begins to darken the air—the *genus irritabile vatum* will soon be all aroused, and a new "battle of the books" will take place.

Let us first see exactly how the question stands. The Bill has been considerably altered since it was first introduced, and as we first printed it. It then related to engravings, and works of art; it is now exclusively confined to books and dramatic publications. The present law enables an author to assign his copyright for twenty-eight years, and if, at the end of that period, he shall be alive, for the residue of his life. But after this period, all copyright ceases, and any one may print his work. By the present Bill it is proposed to give an additional beneficial term of sixty years in every work, to commence on the death of the author, and to be vested in his representatives. It is intended to give the author this additional stimulus to labour, and to render his work entitled to a permanent sale, that he may be enabled to make a property for his family, which may be be-

queathed or be descendible, as he may see fit. This would certainly appear to be an advantage to the author. On the other hand, it may be said, that this benefit will be future—that the bookseller in purchasing copyright, may give him a less sum under these circumstances: at least this is so alleged. The disadvantage of the measure to the public is stated to be the monopoly that will be constituted by the proposed change. As the law now stands, no sooner is the term of copyright, in a work worth reprinting, expired, than the public reaps the benefit: a cheaper edition is brought out, and there is a more extensive diffusion of the work. On the other hand, it is said that except in very small works, the booksellers respect each other's copyright; that no great reduction in price is made; and that where a cheap edition was demanded, it would be for the interest of the author's family to supply it.

Under these circumstances, we shall withhold any further opinion on the effect of the Bill; but we think that if there be any class of works to which its peculiar protection should be given, it is to legal works. It is well known that works of this description require, in their composition, great time and labour; are often long before they obtain popularity, and yield but a small return for the learning, talents, and experience bestowed on them. It is also notorious that the bookseller rarely can give any thing like an adequate remuneration for them to the author. We think, therefore, that so far as it relates to these works, if it were held out to the profession that they might thus secure some provision for their families, it might tend to the production of many excellent works, of material advantage to the public. We shall now add the principal clauses of the Bill.

* 8 Ann. c. 19; 41 Geo. 3, c. 107; 54 Geo. 3. c. 156.

It is intitled "A Bill to amend the Law relating to Copyright."

1. Repeal of former acts. 8 Anne, c. 19; 41 Geo. 3, c. 107; 54 Geo. 3, c. 146 (extending copyright in books).

2. Interpretation clause.

3. That the Copyright in any book which shall hereafter be published, shall be the property of the author thereof, his executors, administrators and assigns, for the term of the natural life of such author, and the further term of *sixty years*, commencing at the time of his death.

4. That in all cases in which the copyright in any book shall be subsisting at the time of *passing this act*, and shall belong to the author thereof, either absolutely or subject to any license or partial assignment, such copyright shall continue for the term of the natural life of such author, and the further term of *sixty years*, commencing at the death of such author; and that in all cases in which the copyright in any book shall be subsisting, but the author thereof shall be dead at the time of *passing this act*, and such copyright shall, either absolutely or subject to any license or partial assignment thereof, belong to the personal representative, or to the legatee, widow or next of kin of such author or other person who may have acquired the same in the course of administration of the estate of such author, such copyright shall continue for the residue of the term of *sixty years*, commencing at the time of the death of such author.

5. That in all cases in which the copyright in any book shall be subsisting at the time of *passing this act*, but the author thereof shall before the *passing of this act* have assigned his whole interest in such copyright, such copyright shall continue and belong to such assignee until the expiration of the term of *twenty-eight years* from the first publication of such book; and in case the author thereof shall then be living, for the residue of the life of such author; and upon the expiration of the said term of *twenty-eight years*, if the author shall be then dead, or if he shall be then living such copyright shall, at the time of his death, continue and revert to the executors or administrators of such author, and their assigns, for the term of *sixty years*, or residue of the term of *sixty years* (as the case may be), commencing from the time of his death; and such reversionary interest shall be subject to the like voluntary and legal disposal and distribution as other personal property.

6. Proviso, that if a book has been published in parts, the term of the copyright shall run from the publication of the last part.

7. Proviso for the sale of copies printed during the interest of the assignee.

8. Proviso for books stereotyped before the passing of this act.

9. Whenever five years shall elapse after the expiration of the twenty-eight years, or the author's death, without publication of any works out of print, any one may petition the Lord Chancellor, &c. for liberty to re-publish

the same, and re-publish the same on such permission.

10. One copy of every book to be delivered at the British Museum.

11. Mode of delivering at the British Museum.

12. Four copies of every book to be delivered within a month after demand for the use of the following libraries: Bodleian Library, public library at Cambridge, Advocates of Edinburgh, Trinity College, Dublin.

13. Publishers may deliver the copies to the libraries instead of the Stationers' Company.

14. Penalty for default in delivering copies for the use of the libraries.

15. Book of registry to be kept at Stationers' Hall.

16. Party making or causing to be made a false entry in the book of registry, to be guilty of a misdemeanor.

17. Entries of copyright may be made in the book of registry.

18. Any one aggrieved by any entry in the registry book may apply to the Lord Chancellor, Master of the Rolls, Vice Chancellor, or Court of Common Law, to order it to be altered or expunged.

19. Remedy for the piracy of books or parts of books by action on the case.

20. That after the *passing of this act* it shall not be lawful for any person to import into any part of the United Kingdom for sale any printed book, first composed, written or printed and published in any part of the said United Kingdom, and re-printed in any other country or place whatsoever; and if any person shall import or bring, or cause to be imported or brought for sale any such printed book into any part of the said United Kingdom contrary to the true intent and meaning of this act, or shall knowingly sell, publish or expose to sale, or have in his possession for sale any such book, then every such book shall be forfeited, and shall and may be seized by any officer of customs or excise, and the same shall be forthwith made waste paper; and every person so offending being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of *ten pounds*, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the said United Kingdom, or shall knowingly sell, publish or expose to sale, or shall cause to be sold, published or exposed to sale, or shall have in his possession for sale contrary to the true intent and meaning of this act, to the use of the proprietor of the copyright in such book: Provided always, that no person shall be liable to any of the last-mentioned penalties or forfeitures for or by reason or means of the importation of any book which has not been printed or re-printed in some part of the said United Kingdom within *twenty years* next before the same shall be imported, or of any book re-printed abroad and inserted among other books or tracts to be sold therewith in any collection where the greatest part of such col-

lection shall have been composed or written abroad.

21. That the publisher of any Encyclopædia, Review, Magazine or other periodical work, to which various persons shall hereafter contribute articles or essays, shall be deemed to be the author thereof, and shall have the copyright therein as though he were himself the sole author thereof, and shall be entitled to all the benefit of the registry at Stationers' Hall and of this act, upon once entering in the said registry book the title of such Encyclopædia, Review, Magazine or other periodical work, the date of the first publication thereof, and the name and place of abode of the publisher thereof, in manner hereinbefore specified: Provided always, that it shall be lawful for the editor of such Encyclopædia, Review, Magazine or other periodical work, with the consent of the publisher, expressed in writing, to be registered as the proprietor of the copyright thereof instead of such publisher, and that it shall be lawful for any author of any article in such Encyclopædia, Review, Magazine or other periodical work, with the like consent, to reserve to himself the copyright in such article, subject to its continued publication as part of such work, and with such consent to make entry in the said registry book thereof, or of any collection of such articles contributed by him, and wherein he has so reserved the copyright, and to enjoy all the benefits of this act in respect thereof.

22. Term of the exclusive right in the representation of dramatic works extended to that of authors.

23. Where the sole liberty of representing a dramatic piece now belongs to the author, it shall endure for his life and for sixty years from his death. And if the author is dead, his representatives shall have it for sixty years from his death.

24. When the right of representing any dramatic piece shall have been assigned, the right shall continue in the assignee for twenty-eight years, or for the life of the author, and afterwards shall belong to the representative of such author.

25. The proprietor of the right of dramatic representation shall have all the remedies given by the act 3 & 4 W. 4.

26. No assignment of copyright of a dramatic piece shall convey the right of representation unless an entry to that effect shall be made in the book of registry.

27. Act of 5 & 6 W. 4. c. 65, respecting lectures, extended to sermons.

28. Power to the Lord Chancellor, Vice Chancellor, Master of the Rolls, and Courts of law to grant injunction in case of piracy.

29. Books pirated shall become the property of the proprietor of the copyright and may be recovered by action, or seised by warrant of two justices.

30. No proprietor of copyright, commencing after this act, shall sue or proceed for any infringement before making entry in the book of registry.

31. Clergymen may lawfully dispose of

copyright or copies of books of which they are the authors.

32. Copyright shall be personalty.

33. Saving the rights of the Universities and the Colleges of Eton, Westminster, and Winchester.

34. Act to extend to all parts of the British dominions.

PRACTICAL POINTS OF GENERAL INTEREST.

THE RIGHTS OF THE ROAD.

In our sixth volume, p. 90, we have stated the law with respect to the rights of the road. We shall now add the following case on this subject.

Case. The declaration stated that the plaintiff was possessed of a gig, which was driven by his servant, and that the defendant, who was on horseback, negligently and carelessly rode against the gig and broke it. Pleas, first, ~~not~~ guilty; and second, that the accident happened by the negligence of the plaintiff's servant. It appeared that the plaintiff's servant was driving the gig on the proper side of the road, and that the defendant then was on horseback, riding at a great rate in the opposite direction, and was on his wrong side of the way, when he came into collision with the plaintiff's gig and broke it.

Coleridge, J.—The question in this case is, whether the defendant was to blame, or whether the fault was wholly or in part in the plaintiff's servant. It has been suggested as a doubt, by the learned counsel for the defendant, whether the rule of the road applies to saddle horses or only to carriages. Now, I have no doubt that it does. If a carriage and a horse are to pass, the carriage must keep its proper side, and so must the horse. It has also been said to be doubtful whether, if a person driving a carriage, is on his proper side, and sees a horse coming furiously on its wrong side, the driver of the carriage should give way and let the horse pass. Now, I think on this point, that it is the duty of a person driving a carriage, under such circumstances, to give way if there be room, so as to let the horse pass, and avoid an accident, although in so doing the carriage does go a little on to what would otherwise be the wrong side of the road.

Verdict for the plaintiff. — *Turley v. Thomas*, 8 C. & P. 168.

GRIEVANCES OF THE PROFESSION.

FEES OF COUNSEL.

Sir,

I have read with indignation a letter addressed to you, signed F., in your number of the Legal Observer, dated March 10, headed "Professional Grievances"—"Fees of Counsel,"—in which your correspondent states himself to be a barrister, and complains of the losses he has sustained for many years, from the non-payment of his professional fees by attorneys, whom he very freely designates as "black sheep" and "sharking members of the profession," proposing as a remedy for such defalcations, shawing these solicitors up, by publishing their names in the room of the Incorporated Law Society. Instances certainly may be found where fees have not been regularly paid, but it very ill becomes your correspondent to vilify the profession* by the epithets so freely launched against it in his letter. For the most part, solicitors and attorneys are as high minded and honorable men: as the branch of the profession your correspondent represents, and he should recollect that it is through the medium of those very gentlemen, that the members of the Bar receive their fees, and that solicitors not unfrequently become considerable losers themselves both of heavy fees paid to counsel, fees of Court and other expenditure, by the misfortunes of their clients, without heaping upon them intemperate abuse. In all professions and grades of life, there are and will be men, who lose sight of their respectability, and cease to be estimable members of society.

The Bar is not exempt from this, and if it were necessary to retaliate upon your correspondent, many of its members might be held up at the present day to contempt and scorn. I have now been in practice as a solicitor for upwards of thirty years, in the course of which I beg leave to say, I have both known from others as well as my own experience, instances of heavy fees taken for work never performed. I have seen briefs transferred from the hands of retained counsel, to those of junior counsel, by whose want of preparation (if not of tact), the case of the party has materially suffered. I have also known of applications made by parties aggrieved, and whose interest has thus suffered, to their retained counsel, for a restitution of fees for which no work had been performed: but no, it was a rule, never to return a fee.

Before I close this letter, I would propound the question of,—how far it is consistent with the exclusive duties and character of a barrister, that he should perform the work of an

attorney, such as drawing and engrossing deeds and wills, attending their execution and publication. This is an interference with the practice of the attorney by no means uncommon. But in my early time, I have known a barrister refer a party to his solicitor, who had applied to him to make his will, and thus decline doing the work legitimately that of another person:—an honorable course of proceeding which it would be to the credit of the Bar, if more generally followed at the present day. VERITAS.

[Our previous correspondent F., having confined his complaint to the "black sheep," and spoken with due respect of the general body of practitioners, we have struck out of the letter of "Veritas" his general animadversions on the Bar. We cannot permit the seeds of dissension between the two branches of the profession to be sown in these pages. The letter in question appeared a month ago, and the above is the only answer we have received. Ed.]

DISPUTED DECISIONS ON ANNUITY ACT.

In answer to a letter signed "An Inquirer," which appeared in the last Number, (p. 439,) there cannot, I apprehend, be the slightest reason to question the soundness of the decision of *Frost v. Frost*,^a which completely meets the question referred to, declaring that an annuity executed for the consideration therein mentioned, does not require inrolment: on the other hand, the case of *Krispe v. Ambrose*,^b which "An Inquirer" adverts to as a more correct judgment, does not raise the question at all, for the deed in that case having been inrolled, as it would seem *ex majore cautela*, the only disputed point was, whether the consideration was sufficiently set out in the memorial.

If your correspondent will reperuse the act, he will find that it is the pecuniary consideration which is required to be inrolled: the wording of which clause would of itself seem to omit cases where the consideration is of a different nature; but this point is completely disposed of under the 10th section, wherein an exception is expressly made of "any annuity or rent-charge granted without regard to pecuniary consideration or money's worth."

There cannot, therefore, I conceive be the least doubt that the annuity referred to, does not require inrolment under the statute, the consideration of which being a debt due, and a liability incurred *bond fide*, prior to the grant, cannot be considered pecuniary.

This view would, of course, be materially altered in case a debt should be made colourably to evade the statute, the non-inrolment of which would make it void.

D. E. O.

* It appeared to us that the profession was not vilified, but the censure was applied to the comparatively few persons, who, out of nearly 10,000, are exceptions to the character of the general body of solicitors. Ed.

NEW BILLS IN PARLIAMENT.

ASHBY, DE-LA-ZOUCH [OR MIDLAND COUNTIES]
SMALL DEBTS COURT.

This is "a bill for the more easy and speedy recovery of small debts within the town of Ashby-de-la-Zouch and other places in the counties of Leicester, Derby, Warwick, and Stafford.

The following are the proposed enactments.

1. Appointing the commissioners by name.
2. Appointment of new commissioners.
3. Three commissioners to be present in cases not exceeding 40s. Five in cases not exceeding 5l. Assistant barrister in cases above 5l.
4. A barrister to be appointed.
5. Barrister may be dismissed.
6. Courts for the recovery of debts above 5l. to be held once in three months, or oftener.
7. In case sufficient number of commissioners do not attend, Court may be adjourned.
8. Time of hearing causes between 10 and 5.
9. Qualification of commissioners. Acts of commissioners good before conviction.
10. Barrister to take an oath.
11. Commissioners to take an oath. Form of oath.
12. Commissioners required to qualify within a certain period.
13. Commissioners &c. not to act where interested.
14. No commissioner to be concerned in the supply of any articles for the use of the court.
15. A common seal to be made and affixed.
16. Commissioners to enter their proceedings in a book.
17. Meetings of commissioners, monthly or oftener for cases not exceeding 5l., and once in three months above that sum.
18. For calling special meetings.
19. For summoning commissioners to attend.
20. Not to exclude any other commissioners from attending.
21. List of commissioners to be made and kept by clerk of the court.
22. Corporate body for certain purposes.
23. Actions and suits may be commenced in name of the clerk.
24. *Jurisdiction*.—That it shall be lawful for the said commissioners, and they are hereby empowered and enabled to decide and determine all disputes and differences between party and party for any sum not exceeding fifteen pounds in all actions or causes of debt: provided always, that no difference, action or cause, where the sum in dispute shall exceed five pounds, shall be decided or determined by the said commissioners, unless at some meeting to be held under the provisions of this act, at which a barrister shall preside as in this act is mentioned: Provided also, that the said commissioners and assistant barrister shall decide and determine all such disputes and differences according to the laws and statutes of that part of the United Kingdom of Great

Britain and Ireland called England, for the time being; except in as far as such laws and statutes are varied or altered by this act.

25. Provided that nothing in this act contained shall extend or be construed to extend so as to enable the said commissioners to determine the right or title to any lands, tenements, or hereditaments, or real estates whatsoever, or to judge, determine or decide on any debt where the title of the freehold or lease for years of any lands, tenements, or hereditaments, or of any chattels real whatsoever, shall be brought or come into question, or on any debt for any sum being the balance of an account or demand originally exceeding fifteen pounds, or to judge, determine, or decide, on any debt that shall arise by reason of the occupation of lands, tenements, or hereditaments, or any of them, or by reason of any cause concerning testament or matrimony, or anything concerning or properly belonging to the ecclesiastical court, or for or concerning any agreement by way of composition for or by way of retention of tithes.

26. This act not to alter the powers of 30 & 31 Geo. 2.

27. Set off. The statute of Limitations. Discharge by bankruptcy and certificate, or by Court for Relief of Insolvent Debtors, may be pleaded. Provision that notice be given to make such defences admissible at the hearing.

28. Infants may be sued for debts contracted for necessaries. Power to infants to sue in the court of requests for debts.

29. Actions not to be split for the purposes of bringing them before the court, but the court may decree in such action to split, if the plaintiff will receive the money in full of all demands in such action.

30. No privilege to be allowed to attorneys.

31. *Concurrent jurisdiction*.—That all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's Courts at Westminster or otherwise, may still, notwithstanding this act and the powers hereby granted, be brought and determined in either of the said courts at Westminster or otherwise, at the election of the party suing or proceeding, in the same manner as if this act had not been passed.

32. Orders, &c. not to be removed by certiorari or otherwise.

33. Debtors within jurisdiction may be summoned before commissioners who shall adjudge between parties. Summons to be served personally on the debtor.

34. Clerk not to issue summons till deposit is made.

35. No evidence to be given by plaintiff of any matter not stated in the summons, &c.

36. Cause may be adjourned.

37. If debtors do not appear, commissioners may proceed.

38. Commissioners may suspend proceedings in cases where debtors are ill or unable to pay the debt.

39. Witnesses to be summoned. Penalty on witnesses not attending.

40. *Practitioners*.—That no barrister, attor-

ney, solicitor, scrivener, or other person practising in the law, shall be permitted to appear or be heard in the said court of requests, as counsel, attorney, solicitor of advocates, for or on behalf of any plaintiff or defendant, or any other person, in any cause, action or matter, where the amount sought to be recovered shall not exceed the sum of five pounds, unless such barrister, attorney, solicitor, scrivener, or other person is himself a party or witness.

41. Commissioners may award execution against the goods.

42. For regulating the sale of goods taken in execution.

43. Costs of distress.

44. In case parties shall secrete their goods or abscond.

45. Process not to issue against the body unless in case of insufficiency of goods.

46. If defendants be out of the jurisdiction of the court, a justice of the peace may indorse the precept, &c.

47. Clerk to insert or indorse debt and costs on precepts, and if paid to the clerk of the court before sale or termination of imprisonment, execution to be superseded.

48. Execution against the body may issue after an execution against the goods.

49. Limitation of the time of imprisonment to seven days.

50. Time of imprisonment shall extend separately and successively for each execution.

51. Gaoler, &c. to receive prisoners committed.

52. Debtors not liable to pay gaol fees.

53. Allowance to defendant for support in prison.

54. Appointment of officers.

55. No victualler, &c. to hold any place of profit, nor any commissioner to be capable of acting as such during such time as he shall be clerk.

56. Notices to be given of meetings for appointing officers, &c.

57. Duty of clerks and sergeants.

58. Officers may be displaced for misbehaviour.

59. Power for the clerk to appoint a deputy.

60. Fees to be taken.

61. The account of fees to be painted on a board and affixed in the court. No fees to be taken unless the board remains.

62. That the fees be paid to the several officers, who shall account to the treasurer.

63. For payment of salaries to the different officers of the court.

64. Offices of clerk and treasurer not to be held by the same person.

65. All the funds and fees to be received by the treasurer, and applied to the purposes of the court.

66. To take an account of all fees received, and to reduce the same if more than necessary.

67. Accounts to be audited.

68. No alteration but at a public meeting.

69. Accounts and other documents to be inspected.

70. For taking bonds from the different officers in the name of the treasurer, that they shall duly account.

71. Serjeant neglecting his duty to pay the debt.

72. Fine on officers taking any fees besides the fees allowed by this act.

73. A list to be made out of unclaimed money.

74. Commissioners to make rules respecting suitors' money. Power to make rules and orders.

75. *Dignity of the court.*—That if any person shall contemptuously or wilfully insult or abuse any of the commissioners of the said court or any of the officers of the said court for the time being, during their sitting or attendance in court, or shall interrupt or obstruct the proceedings of the said court, then and in every such case it shall be lawful for the serjeant of the said court, with or without the assistance of any other person by the order of the commissioners of the said court, to take such offender into custody, and the said commissioners are hereby authorised and empowered to impose a fine not exceeding five pounds for each and every such offence on each and every such offender, which fine shall be recoverable and when recovered shall be paid, applied, and distributed by such means and in like manner as fines and penalties are by this act directed to be recovered, paid, applied, and distributed.

76. Commissioners misbehaving may be struck out of the list.

77. For punishing persons guilty of perjury.

78. For the recovery and application of penalties.

79. Justices may proceed by summons in the recovery of penalties.

80. Form of conviction.

81. Distress not to be unlawful for want of form.

82. Proceedings not to be quashed for want of form.

83. Plaintiff not to recover without notice, or after tender of amends.

84. For paying expences of act.

85. Saving of rights of other courts of request.

86. This act to cease on the passing of any general act.

87. Property belonging to the commissioners to be transferred according to the provisions of any such general act.

88. Construction of certain words in this act.

89. Act may be altered during the present session.

90. Public act.

SELECTIONS FROM CORRESPONDENCE.

CROSSING BANKERS' CHEQUES.

Sir,

I have read the letters of your correspondents, at pages 377 and 395, respecting the practice of crossing banker's cheques, and it appears to me, that the subject is not rightly understood. The observations of your corres-

pendent, p. 377, seem to be grounded upon the supposition that the practice in question has been adopted for the security of the drawer or payee of a cheque alone; whereas, I understand the fact to be, that the practice has been adopted and acted upon by the bankers themselves, mainly for their own protection against fraud, and to afford them facilities for tracing parties to whom monies may have been wrongly paid; and that it was never intended to insure to the drawer or payee the payment of the money to the particular banker and to no other; indeed, if it were to have such an effect, it would change the character of the document altogether, it being essentially an order payable to *bearer*. And the Bank of England did not, until lately, unite with the bankers in this practice, for they used invariably to pay cheques on presentation, to the Bearer, although they were crossed with a banker's name; but now I believe they do act upon this system along with the bankers.

Under these circumstances, therefore, I cannot see how the questions of liability and redress mooted by your correspondent can arise; and if they did, they could not be entertained, for cheques are in effect money, and why should you limit their circulation? If a person rightly pays his cheque and takes a discharge for it, he is not of course, liable to pay it again; or if the party to whom it has been paid, loses it, or it gets misapplied, the drawer is not affected by it, because the cheque would not be twice paid by the banker; and if a forgery were committed successfully, the loss would fall upon the banker, and not the customer.

But after all, the practice of crossing cheques with several names, is not, I apprehend, nearly so extensive as your correspondent would infer; for I have no doubt that by far the greater number of cheques daily issued, do find their way into the hands of the banker with not more than one name across—indeed I should say the number that do not do so is very insignificant in comparison with the other; but if it were otherwise, I very much doubt the prudence of interfering in the circulation, by adopting a method for limiting the payment of cheques as proposed, for considering the immense amount of money daily changing hands by virtue of cheques, I certainly think it would be productive of much inconvenience. I will mention one case: *A.* draws a cheque payable to *B.*, and crosses it — & Co.—the cheque is sent by *A.* to *B.*, and *B.*, not keeping an account with a banker, goes to receive cash for his cheque himself, when he is told, that as the cheque is crossed, he must send it through a banker. How then is he to get his money if he be not permitted to pass it into other hands? His first course, at present, is to pay it to some person (or get cash for it) who can send it through a banker; and his second and only remaining course would be, if deprived of the other, to take his chance of getting the drawer to give him another cheque, not crossed, in exchange.

N.

JUDGES STATING PROCEEDINGS ON TERMS.

A Judge at Chambers has given a defendant a fortnight's time to pay a debt.—If the defendant, in the meantime, become bankrupt or an insolvent debtor, or the plaintiff be otherwise deprived of his debt by reason of the delay, may not an action be maintained against the Judge, who is not authorized, by the common or statute law, or by any rule of Court, to make such an order?

T. T. T.

NEW FEES IN THE COMMON LAW OFFICES.

Sir,

A correspondent of yours, writing on this subject, states (p. 202) that "we have no alternative than to add, (*i. e.* by paying the old sealing fee) to the already enormous expense, or to suffer our proceedings to be set aside." I thought, however, that it had been so arranged that (until the amount of compensation to the sealer should be settled) the old fee for sealing should be paid at the Seal Office, and such a sum as, with the old sealing fee, made up the new fee for signing and sealing, should be paid at the office for signing. But I find that, in cases in which the old sealing fee is not covered by the new fee, the non-settlement of the sealer's compensation has been a difficulty not so easily got over!

For instance, the fee for sealing & sealing & sealing (when sealing only was necessary) was 1s. 2d.; by the New Table (No. 8) the fee for signing and sealing is 1s.; nevertheless, the fee paid at the present time is 1s. 7d. 6d. signing, and 1s. 2d. sealing; notwithstanding the sentence at the head of the Table of Fees has these words: "No fee whatever to be taken, not comprised in this table;" and notwithstanding the act (7 W. 4, and 1 Viet. c. 36) enacts, at the end of sect. 6, that "the fees established, and no other, shall, from the 1st January, 1838, be deemed to be the lawful fees to be therefor demanded."

Supposing the 1s. 2d., for sealing to be, at the present moment, justifiable, I do not see, Sir, on what ground 6d. more is charged for signing. I submit, that either the old fees or the new, and not a sort of compound of both, ought to be charged; and therefore, as long as the old fee of 1s. 2d. is paid, nothing additional should be paid for signing.

As to the 1s. 2d. for sealing being now taken: this fee, it appears to me, is now clearly illegal, and therefore not to be justified, except on the ground of necessity. With all due deference, I think that there was not, and is not now any difficulty in the way of the immediate adoption of the new Table at the Seal Office. If the amount of the sealer's compensation be to be computed from the beginning of the present year, why should not the new fee of 1s. for signing and sealing be paid at the Seal Office, on account of such compensation? Or, if it be intended to compute the compensation from the time of its settlement, might not the 1s. be paid for the

present at the Seal Office, and the sealer, when the compensation is settled, receive (from whatever source it is intended his compensation shall come) the remaining 2d. for every test. *fi. fa.* for which 1s. had been paid? And in like manner, in all cases in which the old sealing fee is not covered by the new fee.

Permit me, Sir, to take this opportunity to call your readers' attention to the recital contained in the 6th sect. of the above act: "And whereas it is expedient that a new table or tables of the fees proposed to be taken in the Superior Courts of Common Law at Westminster should be prepared with reference to the various changes and alterations which have taken place in the process, practice, and proceedings of those Courts, and to the diminution of expense, where practicable, to the suitors." Looking at the above words, and at the same time at the increase of expense to the suitors caused by the new Table of Fees, I think it is not too much to say, that the intention of this act, so far as appears on the face of it, has not been carried out.

F. W. D.

PARLIAMENTARY RETURNS.

(Continued from p. 442).

CORONERS IN ENGLAND & WALES,

Northumberland.

There are two coroners for the county of Northumberland, elected by the freeholders.

I am not aware of any contested election for the office of coroner for Northumberland since 1st January 1800, except on the 15th June 1815, when Mr. Reed, one of the present coroners, was elected; upon that occasion 570 freeholders polled; the contest lasted one day.

Robert Thorpe, Clerk of the Peace.
12 December 1837.

Northamptonshire.

Number of coroners, six; of whom

There are county coroners, appointed by the freeholders: for which office or appointment there has been no contest since 1st January 1800.

One is coroner for the city of Peterborough, appointed by the Dean and Chapter of the cathedral church at Peterborough.

One is coroner for the liberty and hundred of Nassaburgh, appointed by the Marquess of Exeter as lord paramount.

One is coroner for the town and borough of Northampton, appointed by the town council of the borough of Northampton.

Charles Marham, Clerk of the Peace.

Peterborough.

There are two coroners within the liberty of Peterborough, in the county of Northampton, viz., John Gates, esq., of Peterborough, appointed by the dean and chapter for the city of Peterborough; and William Hopkinson, of Stamford, esq., by the Marquis of Exeter, for the liberty of Peterborough.

Thomas Atkinson, Clerk of the Peace.
12 December 1837.

Nottingham.

There are in the county two coroners, elected by freeholders; two for the liberty of Southwell and Scrooby, elected by the archbishop of York (whose secular jurisdiction is now extinguished); one for the borough of Newark, and one for the borough of East Retford, elected by the corporations of those respective places. There has been no contested election for a county coroner since the year 1800.

Edw. Smith Godfrey, Clerk of the Peace.
13 December 1837.

Oxford.

The number of county coroners in Oxfordshire is four; and there are no coroners therein for counties of cities or other special districts. The four county coroners are elected by the freeholders, and no contested election for the office of coroner has occurred in this county since 1st January 1800.

There is also a coroner in the city of Oxford, and in each of the boroughs of Banbury, Henley-upon-Thames, and Woodstock, all in the county of Oxford.

John M. Davenport, Clerk of the Peace.
7 December 1837.

Rutlandshire.

There are two coroners within this county, who are county coroners, and who are elected by freeholders.

There has been no contested election for the office of coroner in this county since the 1st day of January 1800.

William Adee, Clerk of the Peace.
11 December 1837.

Salop.

The number of coroners within the county is 11; of which six are county coroners, and five are coroners for special districts, and which five last mentioned coroners are not elected by freeholders, but appointed by the following authorities:—

One coroner for the borough of Bridgnorth, appointed by the council of the said borough.

One coroner for the borough of Ludlow, appointed by the council of the said borough.

One coroner for the borough of Shrewsbury, appointed by the council of the said borough.

One coroner for the borough of Bishop's Castle, appointed by the bailiffs and burgesses of the said borough.

One coroner for the parish of Ellesmere, appointed by the lord or lady of the manor.

The number and dates of contested elections for the office of coroner in the said county, since 1st January 1800, and the number of votes polled at each election, and the number of days each contest continued, were as follows:—

May 1833.

1015 voters polled - - 3 days contest.

September 1834.

6098 voters polled - - 14 days contest.

John Lordale, Clerk of the Peace.

Somerset.

The clerk of the peace has not made a return; but from a former return it appears that there are three county coroners for Somerset, elected by the freeholders.

Whitehall, 26 February 1838.

[To be continued.]

SUPERIOR COURTS.

Rolls Court.

PAYMENT OF DEBTS.—DOMICILE.

A. was seised of real estate in Scotland, and possessed of personal estate in England, where she was domiciled, and died intestate, and in debt. Her judgment creditors brought actions against the heirs in Scotland, and recovered: Held, that they were entitled to be reimbursed out of A.'s personal estate in England, that being according to the law of the place of domicile, the primary fund for the payment of an intestate's debts.

Lady Essex Ker and Lady Mary Ker, sisters, and co-heiresses of John Duke of Roxburghe, who died in 1804, succeeded to his estates in Scotland, after setting aside, in a long course of litigation, trust deeds executed by the duke, whereby he conveyed the estates upon certain trusts to Mr. Wauchope, who, on the final decision of the House of Lords in favour of the Ladies Ker, conveyed the estates to them. There was then a large sum due to him for advances, and the two ladies incurred debts both by simple contract and bonds; and amongst others a bond debt of 12,000*l.* to Mr. George Nicol.* Lady Mary Ker died intestate in March, 1818, in London, where she was domiciled, leaving real and personal property both in England and Scotland, to which Lady Essex Ker, her sole heiress at law, and next of kin, succeeded, and entered into the possession of the estates, and took out letters of administration in respect of the personalty, and proceeded to complete her title, according to the Scotch form, to the real estates in Scotland, consisting of an undivided moiety of the lands conveyed by Mr. Wauchope. She never did complete her title; but, under the impression that she had so done, she executed a trust disposition and settlement in the Scotch form, in March 1819, conveying all her real estates in Scotland, and all her personal estates, to the late Earl of Winchilsea, and Sir Robert Wms. Vaughan, in trust to sell, and out of the proceeds to pay her debts and legacies, and to dispose of the residue as she directed, and she appointed her said trustees to be her executors. Lady Essex Ker died the September following in London, where she was domiciled. Lord Winchilsea and Sir Robert Wms.

Vaughan proved her will, and entered into the possession of the real estates in England and Scotland, and possessed themselves of the personal estate. The Hon. Henrietta Bellenden, John Bellenden Ker, and John Bultiel, as heirs at law of Lady Mary Ker, disputed the title of Lady Essex Ker to Lady Mary Ker's moiety of the Scotch estates, and instituted a suit in the Court of Session in Scotland against her trustees, and there obtained a decree in their favour, and the House of Lords confirmed the decree. Debts to a large amount, secured by the joint bonds of Lady Mary and Lady Essex Ker, were still unpaid, and there were personal debts due by Lady Essex, including debts due by Lady Mary, which Lady Essex had not paid. The creditors commenced proceedings in the Court of Session against Mr. Ker and Mr. Bultiel, as heirs at law of Lady Mary Ker, for payment of their debts out of the real estates in Scotland. The estates were afterwards sold under an agreement, and part of the produce was applied in payment of debts. In 1833, Mr. Ker and Mr. Bultiel commenced an action of relief in the Court of Session against Sir Robert Wms. Vaughan, the surviving personal representative of the Ladies Ker, concluding that he should be ordered to relieve the heirs of Lady Mary Ker of her personal debts, by paying the same out of her personal estates in England. Sir R. Wms. Vaughan, in his defence, submitted that as Lady Mary Ker was domiciled in England, where her moveable estates was situated, all questions regarding her personal succession should be regulated by the law of England. The Court of Session, on the hearing, directed the opinions of English counsel to be taken on the question, viz. if a person died domiciled in England, having personal property in England descendible to his executor, and real property in Scotland descendible to his heir; and if creditors of the deceased had recovered payment out of the real property, whether the heir would be entitled to relief against the executor in England, and to what extent? The case was laid before Mr. Pepps, (now Lord Chancellor), and Mr. Knight, who gave their opinion that the Scots heir was entitled against the executor and the residuary legatee of the personal estate to claim exoneration from the debts paid by them. The Court of Session, in accordance with that opinion, pronounced an interlocutor in June 1834, finding the defender liable in relief to the pursuers to the extent of the executory funds of Lady Mary Ker, intromitted with by Lady Essex Ker, and by the defenders; and the same Court pronounced another decree in 1835, finding the particular sums that were due. Sir R. Wms. Vaughan, having admitted a balance of 14,944*l.* in his hands, there was a decree in March 1835 for payment thereof to Mr. Ker and Mr. Bultiel. Sir Robert Vaughan had in November 1833, petitioned the Court of Chancery that the decree of the Court of Session should not be carried into effect without leave of the Court of Chancery, which was ordered upon terms. The funds were paid into the Court of

* See 2 Dow & C. 420; and 1 Clark & F. pp. 49 and 495.

Chancery, and there was a reference to the Master to report upon a state of facts; and after several other references, and the opinion of four eminent Scotch advocates, the Master in Chancery, to whom the case was returned, made his report, finding, that by the law of Scotland, there was a distinction between heritable and moveable debts, as to the payment out of real and personal assets; and he found that by that law, creditors claiming moveable debts being paid out of the debtor's real estate in Scotland, the heir or person entitled to such real estate was entitled to be repaid the amount out of the personal estate, regard being had to the domicile of the debtor, and he found that both Lady Mary and Lady Essex Ker died domiciled in England. To that report exceptions were taken by Sir R. Vaughan.

Mr. Penberton, in support of the exceptions.—The question raised by the report was, if a party seised of real estates in Scotland, and possessed of personal estate in England, and domiciled in England, were to die indebted to creditors, who, being entitled to relief out of the real estates in Scotland, elected to proceed in the Courts of that country, and recovered payment against the heir or devisee of those estates, would such heir or devisee have a right to come into the English Courts to be reimbursed his payments out of the personal estate of the deceased? He argued against the affirmation of that as a general proposition. The domicile of the party dying being in England, did not preclude the creditor from proceeding according to Scotch law against the land in Scotland, which was equally liable to the debt. In this particular case, the rule, even if allowed to prevail, would not apply, because Lady Essex Ker survived Lady Mary, whose debts had been put in suit, and was both her personal representative and legal heir; and Lady Essex could not in her capacity of legal heir have an equitable right against herself as personal representative.

Mr. Tinney, in support of the report.—Lady Mary Ker having died in London, and being there domiciled, the *lex loci* was the law by which the question as to her personal estate must be decided. If the Scotch law prevailed, because the land was situate in Scotland, still the heirs at law would have a right to be reimbursed, what they had been compelled to pay, as appeared by the opinions of the Scotch lawyers; and the report of the Master was correctly formed upon their evidence of the law.

Lord Langdale, M. R., having taken time to consider the case, gave his judgment on a subsequent day as follows:—The question was whether the debts of Lady Mary Ker, which had been paid by her co-heirs in respect of her real estates in Scotland, ought to be repaid to them from the proceeds of her personal estate administered in England. Lady Mary and Lady Essex Ker, as co-heiresses of the Duke of Roxburghe, inherited real estates in Scotland. They were both domiciled, and died in Eng-

land, where they contracted debts, and executed joint and several bonds to secure the payment of them. Lady Mary Ker died intestate, leaving Lady Essex Ker her heiress at law, and administratrix. Lady Essex entered upon the Scotch estates of her sister, but did not regularly, according to the Scotch law, make up her title to them. In 1819, Lady Essex Ker executed a deed of disposition, and a will, which was intended to pass the Scotch real estates descended to her from Lady Mary, but in consequence of her not having completed her title to them, they were after her death claimed by the co-heirs of Lady Mary, and the House of Lords decided in their favour. Lady Mary and Lady Essex Ker had personal estate in England, and when Lady Essex died there were joint and several bonds of Lady Mary and Lady Essex then remaining unpaid. The will of Lady Essex was proved by the late Earl of Winchelsea, and Sir Robert Williams Vaughan, residuary legatees, and they filed a bill against another residuary legatee, the Attorney General as representing certain charities, and against the co-heirs, for the establishment of the will and due administration of the estates. During the pendency of that suit some of the bond creditors commenced proceedings in Scotland for payment of their demands, against the co-heirs of Lady Mary; and those co-heirs filed their cross bill against the executors of Lady Essex, who had possessed themselves of the personal estate of Lady Mary, praying for an account, and for a due administration of the estate of Lady Essex Ker, and that a sufficient sum might be set apart for the purpose of discharging such of the debts of Lady Mary and Lady Essex Ker, as were by the laws of Scotland of the nature of moveable debts, and primarily chargeable as between real and personal representatives upon the personal estates, and for relieving the heirs from such payment, and that they might have the benefit of the suit instituted by the Earl of Winchelsea, and Sir R. Wms. Vaughan. The cause was heard in June 1835, when a decree was made directing a reference to the Master, who reported that there was a distinction in the Scotch law between heritable and moveable debts, as to the liability of the debtor's real and personal estates to their payment; and that by the law of Scotland, creditors having heritable debts, were paid out of the debtor's real estates, or by the heirs or devisees entitled to such real estates, regard being had to the domicile of the debtor. Exceptions were taken to the report that there had not been sufficient evidence laid before the Master of the law of Scotland. The debtor here was not domiciled in Scotland, but in England. Personal estate by the law of England is the primary fund for the payment of debts of all kinds contracted by the deceased. His Lordship was of opinion that the exceptions to the Master's report must be overruled, and that an order must be made for the application of the personal estate of Lady Mary Ker, in satisfaction of her share of the personal debts paid out of the proceeds of

her real estates in Scotland, and that the amount must be ascertained by an inquiry before the Master!

Winchelsea v. Carretto; and *Ker v. Vaughan*; at Westminster, Nov. 22d, 1837, and January 29th, 1838.

Queen's Bench.

[Before the Four Judges.]

CORPORATION OFFICERS.

Where the terms of a local act leave it doubtful whether a person appointed under it can be said to be an officer of the corporation, the Court will look to the fund out of which he is to be paid, in order to assist in deciding the question.

The mere form of an appointment and a dismissal, will not establish that the person appointed and dismissed, was an officer of a corporation, and though the Court will not construe the word "officer" with strictness, it will require other circumstances to shew that he is entitled to that character, and as such has a right to claim compensation for the loss of his office.

This was a rule for a *mandamus* to the defendants, commanding them to prepare and execute a bond under the common seal of the borough of Poole, for the purpose of securing to Francis Edwards the yearly sum of 42*l.* 9*s.* 10*d.*, as compensation to him for the loss of his office of collector of dues levied by the corporation of Poole on all vessels entering the harbour of that town. The affidavits filed by the applicant disclosed the following facts:—By a local act, the 29 Geo. 2, c. 10, the corporation of Poole was empowered to make certain assessments on property within the town, and to impose certain dues on vessels entering the harbour, and was directed to employ the revenues so obtained in keeping the harbour in repair and in lighting the town. The mayor and burgesses, with certain other persons to be elected from among the inhabitants of the town, according to directions contained in the act, were empowered and required to carry its provisions into execution; and then came this clause, "that they shall have full power and they are hereby authorised and required to cause the rates to be collected quarterly or half yearly, and to appoint two or more persons to collect the same." The act then went on to impose a penalty on any person who being called on to act as collector "should refuse to be sworn well and faithfully to execute the office of collector." Mr. Edwards was appointed collector on the 23d December 1834, by a resolution of the mayor and burgesses, assembled for the purpose of transacting the affairs of the harbour dues &c., which resolution was in the following terms: "we do under and by virtue of the said recited act, and under our hands, or under the hands of the major part of us, assembled in the Guildhall of the said town and county of the town of Poole, nominate and appoint Francis Edwards of the said town and county, gentle-

man, to be collector, to ask, demand and require, collect, and receive, the several rates, duties, and customs by the said act directed to be paid, with the powers, privileges, and authorities incident to or in any way belonging to the office under and by virtue of the said act; and in consideration of the services to be done and performed by the said Francis Edwards, we do assign and allow unto the said Francis Edwards, one moiety of the poundage of 2*s.* in the pound, payable out of the rates and duties to be collected. We do order and direct the said Francis Edwards to pay the money by him collected and to be collected and received as aforesaid into the hands of James Seager of the town and county of Poole, Esq., the present treasurer heretofore appointed to receive the same, or to such other person or persons as the said mayor, bailiffs, and burgesses may at any time hereafter nominate and appoint for that purpose at the end of every calendar month, or as often as they the said mayor, bailiffs, and burgesses or the major part of them shall direct or appoint." On the 3d of January 1836, Mr. Edwards was dismissed by a letter, written in the name of the council of the borough of Poole, and signed "Thomas Arnold, Town Clerk." Mr. Edwards applied to the town council for compensation for the loss of his office; but his application was refused, and he then appealed to the Lords of the Treasury. Their lordships took his case into consideration, and by a minute dated the 18th of May, 1837, directed that he should receive compensation to the amount of 42*l.* 9*s.* 10*d.* yearly, and ordered a bond for that purpose to be prepared. The town council refused to obey the order. On the part of the defendants, affidavits were put in to shew that the mayor, bailiffs and burgesses had always been accustomed to remove the collectors at their pleasure; that the office of collector had never in practice been considered as an appointment for life; that though the appointment of collectors &c., before the Municipal Corporation Act, had been in the mayor, bailiffs and burgesses, and was now vested in the town council of the borough, yet the management of the quays and harbours, and of the dues, and the payment of the officers' salaries had always been vested in a part of the corporate body, called the Quay Committee, by whom a separate fund, called the Quay Fund, over which the corporation had no control except as trustees under the local act and for the especial purpose of carrying that act into effect, was raised and managed; that the quay fund was not considered to be liable to the payment of any charge relating to the borough; that the borough fund was not applicable to the payment of any of the salaries of any of the officers appointed under the act, for the collection or management of the quay revenues or any purpose connected therewith; and that in the audit of accounts, the quay fund had never been included in the audit of the borough accounts, but had always been audited at a different period of the year, as directed by the local act.

Sir W. Follett and Mr. *Burston* showed cause against the rule. The provisions of the local act and the practice alike shew the commissioners of the harbour dues have a right to dismiss their servants at their free will and pleasure. The appointments are not for life, and have never been so considered. The funds out of which the salaries are paid, are not properly corporation funds. The manner and the time of auditing the borough accounts and the quay fund accounts are different, the latter being expressly managed according to the directions of the local act. Though the members of the corporation are among the commissioners to carry the local act into execution, the corporation, as such, has no authority over the harbour dues. Mr. Edwards, therefore, cannot be considered as a borough officer. He did not become so by the mere circumstance of his appointment appearing in form to be made by the corporation; for the members of the corporation did not make the appointment in their corporate character, but in the character of commissioners under the act. In no view of the case, therefore, can he be said to be entitled to compensation.

The *Attorney General* and Mr. *Bingham*, in support of the rule.—Mr. Edwards was appointed by the corporation; he was dismissed by the corporation, his office, therefore, was a corporate office, and he is entitled to compensation. The particular fund out of which his salary was paid, does not affect the question. The term "officer" has been held by this Court^a not to require in all cases a strict interpretation. If therefore, this Court finds that a man has been appointed by a corporation to perform the duties of a certain office; that the corporation has determined what salary he shall receive, and has afterwards dismissed him from the office, the Court will consider him as an officer of the corporation, within the meaning of the Municipal Corporation Act, and will order him a compensation accordingly. Now the Court does find all these things in the present case, and will therefore treat Mr. Edwards as entitled to claim compensation under the statute. Besides, the terms of the local act, and the expression used in the appointment, both shew that Mr. Edwards is an officer, and the legislature having thus named him, and the corporation having adopted the name, his claim to it can no longer be disputed by that corporation itself.

Cur. adv. vult.

Lord Denman, C. J., delivered the judgment of the Court. After stating the facts of the case, his Lordship said:—The question is, whether Mr. Edwards was or was not an officer of the corporation of Poole. If we think that this question ought to be answered in the affirmative, then he will have a right to compensation; but if in the negative, he will have no such right, and this rule must be discharged. It was argued that under 29 Geo. 2, c. 10, the mayor and burgesses had long

been entitled to these duties, and that all that had been done in execution of the powers given, and of the duties imposed by that act, had been so done under the management of the mayor, bailiffs, and burgesses of the borough, by whom the money had been expended for the purposes directed by that act. In order to collect the rates and duties levied under the act, the mayor and burgesses had the power to appoint officers, and among the rest a quay master and collector. They were to apply the money levied to the repair of the harbour, and for other purposes mentioned in the act. Edwards was the collector at the time of the passing of the Municipal Corporation Act. Since then he has lost his office, and it has been contended that he lost it under the Municipal Corporation Act, and that he is entitled to compensation. We agree with the argument that the act ought to receive a liberal construction; and reference in support of that argument was made to the case of *Rex v. Bridgwater*. From that case, we are not disposed in the least degree, to differ. The question is, whether we can apply the rule there laid down to the present case. Looking at the act of parliament, we doubt whether Edwards can be considered an officer of the borough, and that doubt is not removed by reference to the statute, though the chief trustees to carry it into execution are the members of the corporation. The members of the town council are now in the situation of the mayor, bailiffs and burgesses of the old corporation; and so far, therefore, the Municipal Corporation Act does not affect the question. But the doubt arises upon the form of the appointment of Mr. Edwards. If he had been appointed for life, they could not have removed him; but it seems to us, that by the local act, he was removable at the pleasure of the Commissioners, and we think that he was removed under that act, and not under the provisions of the general Municipal Act. We cannot determine whether there was any justifiable cause for his removal; but we come to the present conclusion with the less reluctance as we find that the revenues which it was his duty to collect, do not go to the borough fund; and we think that there would be some incongruity in fixing the burden of compensation upon the borough fund, when we do not see that the party was a borough officer, or that these duties go to swell the amount of that fund.

Rule discharged.—*The Queen, Ex parte Edwards, v. The Mayor and Town Council of Poole*, H. T. 1838. Q. B. F. J.

Queen's Bench Practice Court.

TITLE OF AFFIDAVIT.

An affidavit, which is produced to prove the execution of a power of attorney, under which a demand is made of the performance of an award, must be entitled in the cause.

The *Attorney General* had obtained a rule nisi in this cause, for an attachment, for the

^a *Rex v. Bridgwater*, 13 L. O. 297.

non-performance of an award, against which *Platt* shewed cause. He objected to the affidavit verifying the execution of the power of attorney, which authorised the demand of the execution of the award, on the ground that it was not entitled in the cause.

The Attorney General, *contrà*, submitted, that this was a matter not immediately applying to the case, and the affidavit was not irregular. The cause had been disposed of by the arbitrator directing a verdict to be entered in a particular way, and the proceeding by attachment was therefore independent of it.

Coleridge, J., said that as in this case the demand of the performance of the award was made under a power of attorney, no affidavit to prove the execution of that power could be produced, unless it was entitled in the cause.

Rule discharged.—*Doe d. Clark v. Stillwell and another*, H. T. 1838. Q. B. P. C.

Exchequer.

REFERENCE.—ENLARGEMENT OF TIME.—ATTACHMENT.

The plaintiff cannot shew for cause against a rule for an attachment for non-performance of an award, after the order of reference and the enlargement of the time has been made a rule of Court, that there was no affidavit of the due enlargement of time; but the proper course is to move to set aside the rule of Court.

Erle had obtained a rule for an attachment against the plaintiff in this cause, for non-performance of an award.

Kelly now shewed cause. By the order of reference, the arbitrator was required to make his award by a certain day, with liberty to enlarge the time. The award was made, and it recited an enlargement of the time; but there was no affidavit of the enlargement. It was urged that a party endeavouring to put into practice the strict process of the Court, in order to bring another into contempt, must shew that every requisite step had been properly taken.

Parke, B.—*Davis v. Vass*, 15 East, 27, decided that point.

Erle, in support of the rule, referred to the rule, making the order of reference and enlargement of time a rule of Court.

Parke, B.—If it is the practice that the enlargement of time shall be made a rule of Court only on production of an affidavit, the rule of Court will be good evidence of the affidavit having been produced. *Dickens v. Jarvis*, 5 B. & C. 528, is in point.

Lord Abinger, C. B., said that the proper course would be for the present rule to be enlarged, in order to afford the plaintiff time to move to set aside the rule, by which the order of reference and enlargement of time was made a rule of Court, and for the defendant to shew, if he could, that the time was duly enlarged.

Parke, B.—The Court must presume that the order of reference, and the enlargement of time were regularly made a rule of Court; but if there had been no affidavit of the due enlargement of the time, the plaintiff must move to set aside the rule.

Rule accordingly.—*Barton v. Ranson*, H. T. 1838. Excheq.

FRIVOLOUS DEMURRER.

A demurrer to a declaration containing counts for money lent, money had and received, and on an account stated, assigning for cause that no time is alleged, will be set aside as frivolous.

Mansel having obtained a rule to set aside a demurrer as frivolous,

Pike shewed cause.—The declaration was for money lent, money had and received, and on an account stated; and to these counts there was a demurrer, assigning for cause, that no time was alleged. It was now submitted that the demurrer was good as to part, and could not therefore be set aside as frivolous.

Mansel, contrà, cited *Lane v. Thelwall*, 4 D. P. C. 706, by which it was decided that time need not be specified, except in the count on the account stated.

Per Curiam.—It is quite clear the demurrer is too large, and is good for nothing.

Rule absolute.—*Jackson v. Cawley*, H. T. 1838. Excheq.

CHANCERY SITTINGS,

Easter Term, 1838.

Lord Chancellor.

AT WESTMINSTER.

Wednesday	Apr. 18	Appeal Motions
Thursday	.. 19	Petitions, and the Causes that have been in the paper.
Friday	.. 20	Appeals.
Saturday	.. 21	
Monday	.. 23	
Tuesday	.. 24	
Wednesday	.. 25	Appeal Motions and Do.
Thursday	.. 26	
Friday	.. 27	
Saturday	.. 28	
Monday	.. 30	Appeals and Causes.
Tuesday	May 1	
Wednesday	.. 2	
Thursday	.. 3	
Friday	.. 4	Appeal Motions and Do.
Saturday	.. 5	
Monday	.. 7	
Tuesday	.. 8	
Wednesday	.. 9	Appeals and Causes.
Thursday	.. 10	
Thursday	.. 10	Appeal Motions and Do.

Such days as his Lordship is occupied in the House of Lords excepted.

Vice Chancellor.**AT WESTMINSTER.**

Wednesday	Apr. 18	Motions.
Thursday	.. 19	Petition-day.
Friday	.. 20	Short Causes, Pleas, Demurrers, Exceptions, Causes and Further Directions.
Saturday	.. 21	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	.. 23	
Tuesday	.. 24	
Wednesday	.. 25	
Thursday	.. 26	Motions.
Friday	.. 27	Short Causes, Unopposed Petitions, Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 28	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	.. 30	
Tuesday	.. May 1	
Wednesday	.. 2	
Thursday	.. 3	Motions.
Friday	.. 4	Short Causes, Unopposed Petitions, Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	.. 5	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	.. 7	
Tuesday	.. 8	
Wednesday	.. 9	
Thursday	.. 10	Motions.

Rolls.**AT WESTMINSTER.**

Wednesday	Apr. 18	Motions.
Thursday	.. 19	Petitions in Gen. Paper.
Friday	.. 20	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	.. 21	
Monday	.. 23	
Tuesday	.. 24	
Wednesday	.. 25	Motions.
Thursday	.. 26	
Friday	.. 27	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	.. 28	
Monday	.. 30	
Tuesday	.. May 1	
Wednesday	.. 2	Motions.
Thursday	.. 3	
Friday	.. 4	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	.. 5	
Monday	.. 7	
Tuesday	.. 8	
Wednesday	.. 9	Petitions in Gen. Paper.
Thursday	.. 10	Motions.

AT THE ROLLS.

Friday	.. 11	Short Causes after swearing in the Solicitors.
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Short and Consent Causes, and unopposed Petitions every Tuesday, at the sitting of the Court.

Equity Exchequer.

Thursday	Apr. 19	Petitions and Motions.
Tuesday	.. 24	Causes.
Friday	.. 27	Petitions and Motions.
Saturday	.. 28	Pleas, Demurrers, Exceptions, and Further Directions.
Tuesday	May 1	Causes.
Saturday	.. 5	Petitions and Motions.
Monday	.. 7	Pleas, Demurrers, Exceptions, and Further Directions.
Wednesday	.. 9	

COMMON LAW SITTINGS.*Easter Term, 1838.***Queen's Bench.***In Term.***MIDDLESEX.****LONDON.**

Thursday April 19	
Monday April 23	
Tuesday May 8	Wednesday May 9

After Term.

Friday May 11	Saturday May 12
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The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will probably be postponed from the 19th and 23d of April to the 11th of May; and all other Causes on the Lists for the 19th and 23d of April, will be taken from day to day until they are tried.

Undefended Causes only will be taken on the 8th of May.

Defended as well as undefended Causes entered for the Sitting on May 9th, will be tried on that day if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Common Pleas.*In Term.***MIDDLESEX.****LONDON.**

Wednesday	.. April 25	Friday April 27
Wednesday	.. May 2	Friday May 4

After Term.

Friday May 11	Friday May 12
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The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The Causes in the List for each of the above Sitting Days in Term, if not disposed of on those Days, will be tried by adjournment on the Days following each of such Sitting Days.

On Saturday the 12th of May in London no Causes will be tried, but the Court will adjourn to a future Day.

Eyrequeer of Pleas.

In Term.

MIDDLESEX.

1st Sittings. Saturday, April 21st.
By adjourn^t. (if necessary), Monday, April 23rd.
2d Sittings. Wednesday, May 2d.
By adjourn^t. (if necessary), Thursday, May 3rd.
Friday, May 4th.

LONDON.

1st Sittings. Thursday, April 26th.
By adjourn^t. (if necessary), Friday, April 27th.
2d Sittings. Monday, May 7th.
By adjourn^t. (if necessary), Thursday, May 8th.

After Term.

MIDDLESEX.

Friday.....May 11th

LONDON.

Saturday...May 12th
(to adjourn only).

No Special Juries will be taken in or after
Easter Term (the Revenue Causes excepted).
The Court will sit at half-past nine o'clock.

LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

Royal Assents.

Annual Indemnity.
Slavery Abolition Amendment.

House of Lords.

ADMINISTRATION OF JUSTICE.

For extending the Remedies of Creditors
against the Property of Debtors, and for
abolishing Imprisonment for Debt, except
in cases of Fraud. Lord Chancellor.
[In Select Committee.]

For regulating Charities. Lord Brougham.
[This bill stands for second reading.]

For Exchanging Lands in Common Fields.
Lord Ellenborough.
[In Committee.]

To remove doubts as to the validity of oaths, and
to substitute affirmations. Lord Denman.
[This bill waits for second reading.]

To prevent the holding of Vestries or other
Meetings in Churches. Bishop of London.
[For second reading.]

The House adjourned to Friday the
27th April.

House of Commons.

ADMINISTRATION OF JUSTICE.

For the improvement of County Courts of
Civil and Criminal Jurisdiction.

Lord John Russell.

[This bill stands for second reading on
the 7th May. We shall probably be
able to print it next week.]

To provide for the access of Parents, living
apart from each other, to Children of tender
age. Mr. Serjt. Talfourd.

[This bill is now in Committee.]

To amend the Law of Copyright.
Mr. Serjt. Talfourd.

[For second reading.]

To amend the Law of Patents, and to secure to
individuals the benefit of their inventions.

Mr. Mackinnon.

To facilitate the Recovery of Possession of Ten-
ements, after due Determination of the Ten-
ancy. Mr. Aglionby.

[This bill is referred to a Select Committee.]

To enable Recorders of certain Boroughs to
hold a Court for the Recovery of Small
Debts. Colonel Seale.

To make better provision for collecting and
distributing the estates of persons found
bankrupt under Commissions and Fiats di-
rected to Country Commissioners.

Solicitor General.

For rendering English Judgments effectual in
Ireland and Scotland, Scotch Judgments
effectual in England and Ireland, and Irish
Judgments effectual in England and Scot-
land. Mr. Mahony.

To establish a Court for the Recovery of Small
Debts in the Borough of Finsbury.

Mr. Wakley.

[This bill, as originally brought in, has
been withdrawn; and another intro-
duced and read a first time.]

For the Recovery of Small Debts in the
Borough of Marylebone.

Lord Teignmouth.

[For second reading.]

For the Recovery of Small Debts in Ashby-
de-la-Zouch and other places in Leicesters-
hire, Derbyshire, Warwickshire, and Staf-
fordshire.

[Pushed.]

To provide for International Copyright.

Mr. P. Thomson.

[For second reading.]

To regulate the office of Sheriff in England
and Wales. Col. Davies.

[This bill has been referred to a Select
Committee.]

For the better Regulation of the Thames
Watermen. [For second reading.]

For the better Regulation of the Profession of
Attorney and Solicitor in Ireland.

Mr. O'Connell.

[For second reading.]

LAWS OF PROPERTY.

To facilitate the Enfranchisement of Lands of
Copyhold and Customary tenure.

To amend the Law relating to Lands held by
Copy or Court Roll.

To authorize the identifying the Boundaries
of Manors.

[These three bills are referred to a Select
Committee. For a list of the names
see p. 384, ante.]

To amend the Law of Escheat.

To abolish Customs affecting Lands in certain cases. The Attorney General.

[These two bills stand for second reading.]

To enable Tenants for Life of estates in Ireland to make improvements in their estates, and to charge the inheritance with a portion of the monies expended in such improvements.

Mr. Lynch.

To enable Tenants for Life and Mortgagors in possession of lands in Ireland to grant Leases, and to enable Tenants for Life of lands in Ireland to make Exchange, and for giving a summary Partition in all cases as to Lands in Ireland.

Mr. Lynch.

[This and the previous bill stand for second reading.]

To enable Married Women, with the Consent of their Husbands, to pass their Interests in Chattels Personal.

Mr. Lynch.

[This bill stands for second reading.]

To amend the 13 G. 3, for the better Cultivation, Improvement, and Regulation of the Common Arable Fields, Wastes and Commons of Pasture in this Kingdom.

Lord Worsley.

[This bill stands for third reading.]

To render the Owners of Small Tenements liable to the Payment of the Rates assessed thereon.

[This bill stands for second reading.]

CRIMINAL LAW.

To authorize the summary Conviction of Juvenile Offenders, in certain Cases of Larceny.

Sir E. Wilmot.

To authorize Recorders of Boroughs and Chairmen of Quarter Sessions to reserve points of Law in Criminal Cases for the Opinions of the Judges.

Sir E. Wilmot.

That certain offences to which the punishment of death is no longer attached, be tried at the Assizes, and not at the Quarter Sessions.

Sir E. Wilmot.

To amend the Law of Libel. Mr. O'Connell.

For the suppression of Trading on Sunday.

Mr. Plumtre.

[This bill is in committee.]

LAW OF PARLIAMENTARY ELECTIONS.

To prevent threats to voters, or attempts at intimidation.

Mr. Slaney.

[This bill stands for second reading.]

To amend the 2 W. 4, intituled "An Act to amend the Representation of the People of England and Wales."

Mr. Harvey.

To amend the law for the trial of Controverted Elections for Returns of Members to serve in Parliament.

Mr. Buller.

[This bill has been brought in, and is now in Committee.]

To define and regulate the lawful Expenses at Elections of Members to serve in Parliament.

Mr. Hume.

[This bill is in committee.]

To amend that part of the Reform Act which relates to the duties of Revising Barristers.

Capt. Perceval.

To amend the laws relating to the Qualification of Members to serve in Parliament.

[In Committee.]

Mr. Warburton.

To amend the Registration of Voters.

The Attorney General.

[For second reading.]

To compel witnesses to disclose Bribery at Elections, and to indemnify them.

Mr. O'Connell.

[This bill stands for second reading.]

COUNTY AND HIGHWAY RATES.

To authorize the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

Mr. Shaw Lefevre.

[This bill is in Committee.]

To establish Councils for the Management of County Rates in England and Wales.

[For second reading.]

Mr. Hume.

The House adjourned to Wednesday, April 25th.

THE EDITOR'S LETTER BOX.

The Monthly Record of this month will consist of a Digested Index to all the Cases reported in the present Volume, with a Title Page, Contents, and general Index.

We have again to express our regret that we cannot accommodate some of our correspondents by inserting their queries. They should look into the books and state the result, with any doubts which remain for consideration.

"Studiosus" will excuse our deferring his long letter on the studies and examination of articulated clerks. He has not stated any thing of particular urgency, and the subject has been exhausted. There may be some further points to notice in the course of the ensuing Term, and we will then advert to his letter.

A return has been ordered of the duties paid for the *certificates of attorneys and solicitors*, both in town and country, year by year, from the 1st January 1800, to the 31st December 1837. It does not appear at whose instance this return was called for, but it is probably made with a view to the reduction or abolition of the tax. Nothing but a frequent representation of its injustice will effect any change. It is collected at little expense, for it is taken to the Stamp Office; and so long as it is quietly submitted to, it will be exacted. No such impost is paid by other professions; and it falls in the same degree on the practitioners of fifty pounds a year, as on those of five thousand.

The Legal Observer.

SATURDAY, APRIL 21, 1838.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

PRECEDENTS IN CONVEYANCING.

PERHAPS no work is more useful to the practitioner than a good collection of precedents in conveyancing; at any rate, no book so speedily repays its own price. However learned, or ready, or expert the conveyancer may be,—however good his memory,—and whatever familiarity or experience he may have in the usual forms, still a work where he may at once find something like what he wants, is to him an invaluable companion. Under these circumstances, it is not surprising that many persons have endeavoured to supply this demand, and we have thus a series of works giving "Precedents in Conveyancing," from the time of West's *Symbolography* down to the present day.

The recent changes in the law, although they have in fact made but little alterations in the *forms* of conveyancing, have called forth two works, professing to give precedents adapted to the conveyance of property under the new state of things. The first of these was Mr. Martin's, which we have already noticed,—a work of considerable labour and merit, but defective in plan, and cumbersome and confused, both in its arrangement and in the style in which the forms are drawn;—the second is the work^a now before us.

We have here only the first part, and we have no means given us of judging of the intentions of the editor as to its extent

or general plan. All that is left us, therefore, is, to judge of the future by the present specimen; and we are sorry to say that we can see but little chance of this work being either useful or popular, if a great improvement be not made in its succeeding parts. We cannot see any new point of information which Mr. Bone has contributed to the general stock. He has collected his materials from the most familiar sources: he has not arranged them with much skill, and he has not always, either from forgetfulness or intention, acknowledged the quarters whence he has taken them. We find no additional light thrown on the theory of conveyancing, while the forms which he has adopted have almost all appeared in the Collections of Precedents already before the profession.

As we are not in the habit of saying a single word respecting the legal labours of our contemporaries without giving our readers the opportunity of judging of the accuracy of our assertions, we shall shortly adduce our proofs.

The first section of the Introduction treats of deeds "conveying real estates by common law, and under the Statute of Uses;" and Mr. Bone says:—

"The text of Mr. Justice Blackstone, in his elegant and lucidly arranged Commentaries on the Laws of England, so frequently resorted to, so generally adapted, and so rarely fully acknowledged, has been taken as the foundation of these preliminary observations," p. 3.

Now we may observe, that an editor of a new series of Precedents in Conveyancing is surely bound, in treating of Deeds, to give something more than a mere abridgment of Blackstone's chapter on alienation by deed; but we shall shew that, although Mr. Bone professes only to do this, he, in fact, has

^a Precedents in Conveyancing: a Collection of Forms of Assurances of Real and Personal Property, adapted to the present state of the Law; with an Introduction, and Practical Notes By S. Vallis Bone, Esq., of Lincoln's Inn, Barrister at Law. Richards, 1838.

made use throughout this chapter, not of the text of Blackstone, but of Mr. Stewart's "Principles of Real Property," which he has indeed but "merely fully acknowledged."

Thus, speaking of a feoffment, he says:

"It is a conveyance of corporeal hereditaments from one person to another, by delivery of the possession of the hereditaments conveyed, and evidenced by an instrument in writing; for since the Stat. of Frauds, 29 Car. 2. c. 3, no valid feoffment can be made without a written instrument," p. 4.

Now what does Blackstone say?—

"It [a feoffment] may properly be defined the gift of any corporeal hereditament to another." Vol. 2, p. 309.

But what does Mr. Stewart say?—

"It [a feoffment] may properly be defined the conveyance of corporeal hereditaments from one person to another, by delivery of the possession of the hereditaments conveyed, and evidenced by an instrument in writing; for since the Statute of Frauds, 29 Car. 2. c. 3, no valid feoffment can be made without a written instrument." Principles, p. 211.

A little further on, Mr. Bone says:—

"This mode of conveyance [the lease and release] is preferable to a feoffment, as no livery of seisin is necessary to a bargain and sale of the freehold, as not requiring enrolment, and because the use of the bargainee being vested in possession by the statute, no further use can be declared of it; and it is preferable to a covenant to stand seised for the same reason. It is preferable to a grant, for the conveyance of a remainder or reversion, as it will avoid the necessity of proving the existence of the particular estate at the time of the conveyance, which would be necessary if a grant were employed, &c." p. 7.

Mr. Bone will find nothing like this in the text of Blackstone; but in Mr. Stewart's Principles, we find the following passage:—

"In conveying real property, whether corporeal or incorporeal, unless some special purpose is to be answered, which requires the peculiar properties of the other assurances, the lease and release is now universally adopted. This mode of conveyance is to be preferred to a feoffment, as it requires no additional ceremony—such as livery of seisin, to complete it; and to a bargain and sale, or covenant to stand seised, as it is more capable of carrying into effect the usual intentions of the parties, as it can be declared of the origin of the release, but not that of the bargainee or covenantor &c. [and a little lower down] "Remainders and reversions are now very generally conveyed by this assurance, as it will obviate the necessity of proving that the particular estate was in exist-

ence at the time of the conveyance, which would be necessary if a grant were employed." Principles, p. 231.

And it would be easy to show that Mr. Bone has, throughout this section, made use of Mr. Stewart's work, without any acknowledgment. We have now, however, bestowed sufficient attention to the present publication; and will only say in conclusion, that the editor, if he wishes to gain any thing like a footing for his Precedents, must not be content with availing himself of the labours of others, but contribute his full share of learning and originality. If he does so in his future parts, he shall meet with full encouragement from us.

THE PROPERTY LAWYER.

VENDOR AND PURCHASER.

THE following case decides a new point in the law of vendor and purchaser, as we do not believe that there is any similar case to be found. It was first reported by our own reporter, (13 L. O. 363,) and we consider it sufficiently important to give a portion of the judgment of Lord Langdale, M. R., as it has been just given at greater length by Mr. Keen, Vol. 2, p. 25.

There were several other points in the cause; but the one to which we allude, may be shortly stated. The plaintiff was entitled to an estate called the Rookery, at Woodford, Essex; and employed an auctioneer to sell it by auction in five lots; and the same auctioneers were employed by a Mr. Davies to sell for him an estate at Layton, on the same day, and at the same place—Garraway's Coffee House. The defendant wished to purchase Davies' estate, but by mistake he purchased the third lot of the plaintiff; and when he found it out, he refused to sign the contract, or pay the deposit. The plaintiff filed his bill to compel specific performance of the contract, and the Master of the Rolls thus expressed his opinion on the point:—

"Certainly, if the defendant did fall into any mistake, it cannot be ascribed to the conduct of the plaintiff. The plaintiff and his agents in no respect contributed to it; and, if the defendant by his carelessness has caused any injury or loss to the plaintiff, he is accountable for it. But the defendant may be answerable for damages at law, without being liable to a specific performance in this Court. In cases of specific performance, the Court exercises a discretion, and, knowing that a party may have such compensation as a jury will award him, in the shape of damages for the breach of contract, will not in all cases decree a specific performance; as in cases of intoxication, although the party may not have been drawn in to drink by the plaintiff, yet if

the agreement was made in a state of intoxication, the Court will not decree a specific performance. And the question here is not, ~~as it has been put, whether the alleged mistake, if true, is one in respect of which the Court will relieve,~~ for the Court is not here called upon to relieve the defendant from his legal liability; but whether, if the mistake he proved, the Court will enforce a specific performance, leaving the defendant to his legal liability. And I think that, if such a mistake as is here ~~alleged to have happened, he made out, a specific performance ought not to be decreed;~~ and after giving to the evidence the best consideration in my power, I am of opinion that the defendant never did intend to bid for this estate. He was hurried and inconsiderate, and, when his error was pointed out to him, he was not so prompt as he ought to have been in declaring it. It is probable, that by his conduct he occasioned some loss to the plaintiff; for that he is answerable, if the contract was valid, and will be left so, notwithstanding the decision to be now made. But I think that he never meant to enter into this contract, and that it would not be equitable to compel him to perform it, whatever may be the responsibility to which he is left liable at law. Let the bill, therefore, be dismissed without costs. *Malins v. Freeman*, 2 Keen, 25.

ON EVIDENCE IN BANKRUPTCY.

OF the numerous alterations and improvements at various times made in the laws relating to bankrupts, none are more important, or have proved more beneficial to the public, than those tending to lessen and simplify the evidence required in suits and actions affecting bankrupts' estates.

Under the old law, in all questions brought by assignees of a bankrupt before either of the Courts of Law or Equity for adjudication, it was necessary for them, not only to adduce evidence respecting the matter immediately in dispute, but to go through the whole process, which had recently been completed before the Commissioners for establishing the bankruptcy, of proving anew the various requisites for founding a commission, *viz.*, the petitioning creditor's debt, the trading, and the act of bankruptcy. This was found in many cases to operate very seriously to the prejudice of bankrupts' estates; for the consequences of failure on the part of assignees in establishing either of the before-mentioned essentials, being so momentous as to destroy altogether their title, it was necessary to be prepared with the clearest and most particular evidence in support of each point,—the procurement of which was frequently attended with heavy

expence; while fraudulent bankrupts, like drowning men, ever eager to catch at any technicality which afforded a chance of escape from a dilemma they might not have expected, too often instigated vexatious proceedings for the mere purpose of availing themselves of any defect of proof that chance might throw in their way. Nor was the evil of less magnitude where questions arose between assignees and debtors to the estate, for claims the most indisputable were constantly being defeated for want of some technical proof in support of the bankruptcy. To remedy these inconveniences, the act of 49 Geo. 3, c. 121, (which from its having been framed and introduced into parliament by the late Sir Samuel Romilly, was called Romilly's Act,) was first passed; and by the 10th section of that act, it was enacted, that from and after the passing thereof, in any action then brought, or thereafter to be brought by or against any assignee of any bankrupt, the commission of bankrupt and the proceedings of the Commissioners under the same, should be evidence to be received of the petitioning creditor's debt, and of the trading and bankruptcy of such bankrupt, unless the other party in such action should, if defendant, at or before the time of his pleading to such action, and, if plaintiff, before issue joined in such action, give notice in writing to such assignee, that he intended to dispute such matters or any of them; and where such notice should have been given, if such assignee should at the trial prove the matter so disputed, or the other party should at the trial admit the same, the Judge before whom the cause should be tried, should, if he should see fit, grant a certificate that such proof or admission was made upon such trial; and such assignee should be entitled to the costs, to be taxed by the proper officer, occasioned by such notice; and such costs should, in case the assignee should obtain a verdict, be added to his costs; and if the other party should obtain a verdict, should be set off or deducted from the costs which such other party would be entitled to receive from such assignees.

We have set forth this section at length, because, although the act has since been repealed by the 6th G. 4, c. 16, the section quoted together with a succeeding one (the 11th), applying similar rules to suits in equity, in which assignees of a bankrupt are plaintiffs or defendants, are embodied almost *verbatim* in the 90th and 91st sections of the 6 Geo. 4; and the

charges and incumbrances, created intermediate between the raising of the term and the purchase. And this doctrine, unqualified as it is, seems correct. For as the term will prevail over a strict title to the inheritance, it will of course be a protection against judgments, mortgages, and all other incumbrances and estates less than a fee, &c."

STUDENS.

PARLIAMENTARY RETURNS.

(Concluded from p. 457).

CORONERS IN ENGLAND & WALES.

Stafford.

Four coroners for the county of Stafford.

One coroner for Burton-upon-Trent. By what authority, or how he is appointed, I know not.

Two contests for the office in Staffordshire since 1800;—one in 1826, which continued 10 days; the number polled 8222; one in 1830, which continued 30 days: the number polled 7982.

Arthur Hinchley, Clerk of the Peace.
10 January 1836.

Suffolk.

County coroners, two.

Coroners for special districts, three.

Authority by which coroners not elected by freeholders, are appointed:—

One for the liberty of St Etheldred, appointed by the Dean and Chapter of Ely.

One for the liberty of the Duke of Norfolk, appointed by the Duke of Norfolk.

One for the liberty of Bury St. Edmund's, appointed by George St. Vincent Wilson, esq., of Redgrave-hall.

No contested election for coroners of Suffolk has occurred since the year 1790.

J. Horton, Clerk of the Peace.

Surrey.

There has been but one contested election for the office of coroner for the said county since the year 1800; and which election commenced on the 11th May 1825, and lasted three days, and the number of freeholders who voted at such election amounted to 2349. There are two coroners for the county of Surrey, and one for the borough of Southwark, who is appointed by the city of London.

Sheriff's-office, 8, New Inn, 15 Feb. 1838.

Office of Clerk of the Peace.

Beyond stating that there are two coroners in the county of Surrey, each elected by the freeholders, I am unable to furnish the information required, inasmuch as the poll-books at the elections of coroners are not filed in my office at the conclusion of the elections, but remain in the custody of the sheriff, who can therefore, I presume, afford the desired information.

The bill of the coroner for the Duchy of Lancaster is paid out of the county rate of the

county of Surrey; but I have no means of knowing how or when he is appointed.

Wm. Fred. Lawson.

11th December 1837.

Sussex.

The only information in my power to afford is contained in two returns to the Home office, dated respectively 1st March 1834, and 27 June 1836.

There are two coroners for the county; namely, John Lutman Ellis, esq., of Petworth, and Francis Harding Gell, esq., of Lewes, appointed by the freeholders.

One coroner for the rape of Hastings; namely, Thomas Charles Bellingham, esq., of Battle, appointed, I believe, by the lords of manors in that rape.

One coroner for the hundred of Robertsbridge; namely James Martin, esq., of Battle, appointed, I believe, by the lord of the manor.

There are also coroners for the city of Chichester, town of Seaford, liberty of Pevensey, town of Hastings, town of Rye, and town of Winchelsea: but I neither know their names nor by what authority they are appointed.

I have no knowledge of any contested election for the office of coroner of this county since 1st January 1800.

Wm. V. Landridge, Clerk of the Peace.
11 December 1837.

Warwickshire.

There are four coroners for this county, elected by the freeholders.

There has been no contest for the election of coroner in this county since 1st January 1800.

W. O. Hunt, Clerk of the Peace.
12 December 1837.

Westmorland.

Only one contest for the situation of coroner for the county of Westmorland has taken place since the 1st January 1800, which took place on Thursday the 7th May 1835, and continued five days, and 1331 votes polled.

Henry Earl of Thanet, Sheriff.
21 February 1838.

Coroners elected by the freeholders, two. In the year 1835 a contest took place upon the resignation of Mr. Robinson Cartmell; but as the proceedings are before the sheriff, at his county court, the clerk of the peace's attendance is not required; and as no return was made to him, either in his official capacity or otherwise, he cannot furnish the return required. The only person competent to make this part of the return correct is the sheriff.

One appointed for the borough of Appleby by the Mayor of Appleby.

One appointed by the Earl of Thanet for the Forest of Eglebird, of which he is lord of the manor.

R. S. Stephenson,
7 February 1838. Clerk of the Peace.

Wills.

The number of county coroners within the county of Wills is two.

There are no counties of cities in Wills, and there are no coroners of special districts in

Wills, except the coroner of the liberty of Corsham, and the coroners of the cities and boroughs, who, it is understood, are elected at their respective courts.

There has been no contested election for coroner in Wills since January 1800.

John Swayne,

11 December 1837. Clerk of the Peace.

Worcester.

There are four coroners in the county of Worcester, all elected by the freeholders.

There are no official documents in this office relating to coroners, the poll-books being retained by the sheriffs, and the inquisitions by the coroners; but, having made inquiry on the subject, I find that there have been two contested elections for the office of coroner in this county since 1st January 1800; viz., 13th December 1826, in which the number of votes polled was 7561, and the contest continued ten days; and 29th November 1837, in which the number of votes polled was 384, and the contest continued one day.

James Best, Deputy Clerk of the Peace.
20 December 1837.

York.

East Riding.

Number of coroners, seven.

The coroner for the liberty and manor of Howdenshire is appointed by the Bishop of Durham, the chief bailiff.

The coroners for the signiory of Holderness are appointed by Sir Thomas Ashton Clifford Constable, Bart., the chief bailiff.

I believe there has been only one contested election for the office of coroner in the East Riding since 1st January 1800, which commenced on the 10th May 1826, and continued three days, when upwards of 1800 votes were polled. I am not acquainted with this fact officially. The county clerk would probably be able to give more accurate information on this subject.

H. J. Shepherd,

Deputy Clerk of the Peace.

17 January 1838.

North Riding.

John Wood, of York; William Dinsdale, of Aiskew Bedale; Thomas Harrison, of Kirby Morside; John Page Sowerby, of Surkesley; Henry Belcher, of Whitchy; Edmund Wade Conway, of Driffield.

The information you require I am unable to communicate, any farther than that the coroners for the riding are those of the county, and are elected by the freeholders at York.

Edward C. Topham, for Lupton Topham.

West Riding.

Six county coroners, elected by the freeholders, and one coroner for the honor of Pontefract, appointed by letters patent under the seal of the duchy of Lancaster.

I cannot give you any information respecting the number and dates of contested elections for the office of coroner in the West Riding, since 1st of January 1800; and refer you to the county clerk, whose residence is at York.

Benjamin Dixon,

Deputy Clerk of the Peace.

18 December 1837.

As every sheriff has the power of appointing a county clerk for his shire, it has seldom happened that the office has been held by the same person for two or more consecutive years; and the nature of the business transacted by this officer does not require that any records or minutes of proceedings should be transmitted from one county clerk to another. Consequently, as county clerk at the present time, I have no official means of preparing the return required, beyond the year during which I hold the appointment, and hitherto no contested election for the office of coroner has taken place.

Many of the persons who have executed the office of county clerk of Yorkshire since the 1st January 1800, are dead, and I conceive it is now impracticable to obtain authentic returns of the facts required to be stated.

Robert Davies, County Clerk of Yorkshire.
23 December 1837.

Liberty of Ripon.

J. Theakstone, J. Wrigton, and J. Cartman; elected by his Grace the Archbishop of York. No contest.

Note.—By this statute, 6 & 7, Wm. 4, c. 81, s. 10, the election of the coroner is now vested in the freeholders of the liberty.

Samuel G. King,

11 December 1837. Clerk of the Peace.

Liberty of St. Helen, in Yorkshire.

There are two coroners for the liberty of St. Peter of York, and they are appointed by the Dean of York, as *magistri rotularum*, of the liberty.

Chris. John Newstead,

Clerk of the Peace.

Wales.

Anglesey.

There has been no appointment of coroner since the 1st of January 1800, the present coroner, Hugh Wythe, Esq., having been appointed without opposition in 1792.

W. P. Poole, Clerk of the Peace.

Beaumaris, 4 January 1838.

Brecon.

Two county coroners, Henry Maybery and Lewis Watkins, Esqrs.

One coroner for the liberties of Crickhowell and Tretower, in the county of Brecon, who is appointed by his Grace the Duke of Beaufort, the lord of the said liberties; Thomas Davies, Esq.

There has not been any contest for the office of coroner in the county of Brecon since 1st January 1800.

John Powell,

11 December 1837. Clerk of the Peace.

Cardigan.

There are but two coroners in the county of Cardigan, who are elected by the freeholders; and upon inquiry I find that no contested election for that office has taken place in the county since the 1st of January 1800.

John Beynon, Clerk of the Peace.

8 January 1838

Carmarthen.

Number of coroners, three.

Appointed by county freeholders, two.

Appointed by Earl Cawdor, the lord of the manor of the hundred of Kidwelly, one.

There have been no contested elections for the office of coroner for the county of Carmarthen since 1st January 1800.

Jones, Clerk of the Peace.

Carnarvon.

Three coroners within the county of Carnarvon; two county coroners; one for the borough of Conway; appointed by the corporation of Conway. Contested election February 1833, three days' contest; 616 votes polled.

Richard A. Poole, Clerk of the Peace.

Denbigh.

I have applied repeatedly to Robert Nicholls, Esq., (resident in this town,) the sole coroner for the county of Denbigh, for information to enable me to make the return required, but all the information he can give is, that he was elected coroner many years ago without opposition.

Joseph Peers, jun., Clerk of the Peace.
5 February 1838.

Flint.

There is only one coroner in the county of Flint, who is elected by the freeholders, for the whole county; and there has been no contested election for the office of coroner since the 1st January 1800.

H. Roberts, Clerk of the Peace.
11 December 1837.

Glamorgun.

There are three coroners for the county, elected by the freeholders. One coroner for the liberty of Ogmore, appointed by the Earl of Dunraven, and one coroner for the liberty of Gower, appointed by the Duke of Beaufort. There has been no contested election for coroner since 1800.

Thomas Dalton, Deputy Clerk of the Peace.
14 December 1837.

Merioneth.

There are two coroners for the two districts in the county of Merioneth, who are elected by the freeholders. There have been no contested elections for the office of coroner in either district since 1st January 1800.

J. Jones Williams, Clerk of the Peace.
11 December 1837.

Montgomery.

There are two county coroners in Montgomeryshire who are elected by the freeholders.

I have searched the records, and find there has been no contested election for the office of coroner within this county since the 1st of January 1800.

Joseph Jones, Clerk of the Peace.
15 December 1837.

Pembroke.

There are two coroners for this county, who are elected by the freeholders. No contested election for the office has taken place in this county since 1st January 1800.

W. J. Paynters, Clerk of the Peace.
10 February 1838.

Radnor.

There are two coroners for this county, elected by the freeholders, and no other; and there has not been any contested election for the office of coroner since the 1st of January 1800.

James Davies, Clerk of the Peace.
Kington, 11 December, 1837.

By the act 5 & 6 W. 4, c. 76, it is enacted, s. 62, "That the council of every borough in which a separate court of quarter sessions of the peace shall be holden, shall appoint a fit person to be coroner for such borough," &c.; and s. 64, "That in every borough in and for which no separate court of quarter sessions of the peace shall be holden, no person shall take any inquisition which belongs to the office of coroner within such borough, save only the coroner for the county or district in which such borough is situated."

APPLICATIONS FOR RE-ADMISSION

On the last day of Easter Term, 1838.

QUEEN'S BENCH.

Arney, William, Fisherton Anger, Wilts.
Anderton, Robert, Wigan.
Clarke, Charles Robert Meyrick, 26, Coleman Place, Commercial Road; East Stratford, 10, Paterson St., Arbour Sq.; and Grenada Terrace.
Driver, William, Francis Street, Newington Butts; Whitmore Road, Hoxton; Gt. Union St.; and Quarry Gap, Bradford, Yorkshire.
De La Mare, John, 19, Bennett Street, Stamford Street.
Furner, Frederic, Brighton.
Fisher, John Cambridge, Hampstead.
Garrett, James, Calthorp Place, Gray's-Inn Road.
Gilbert, Henry, Puckshipton; and 12, Hunter St., Brunswick Square.
Howson, William, Reeth and Richmond, York.
Leigh, Robert, Manchester; and 69, Great Suffolk Street.
Marshall, William South Cave, York.
Taunton, William Doidge, Totnes, Devon.
Upton, John, Leeds.

Notice left during the Holidays.

Coomes, Wm. junr., Sandy Haven, Pembroke.

ATTORNEYS APPLYING TO BE ADMITTED,

Trinity Term, 1888.

QUEEN'S BENCH.

*Clerk's Name and Residence.**To whom articles, assigned, &c.*

Ashworth, Thomas, Bradford, York.

Richard Tolson, Bradford.

Atkinson, John, Whitehaven; 28, St. George's Road; and 8, Baker Street.

Henry Atkinson, Whitehaven.

Airey, George Symons, 36, Gloucester Street, Queen's Square.

James Atkinson, Appleby; assigned to George Hall, Appleby.

Amphlett, Charles, Taunton; Bedford Street; and 11 Warwick Court, Holborn.

John Frederick Reeves, Taunton.

Argles, Frank Atkinson, Brighton, Sussex; and 24, Great Coram Street.

Thomas Attree, Brighton.

Axford, Frederick Pain, Bridgewater; 11, Queen Square; 8, Devonshire Street; and 14, Gloster Street.

George Henning Pain, Bridgewater; assigned to W. Brissault Minet, Lawrence Pountney Place.

Aston, William, city of Hereford; 6, King's Terrace; and 13, Warwick Court.

John Aston the elder, Hereford.

Atkins, William Gale, City of Winchester; and 5, Princes Street.

John Henry Todd, Winchester.

Bryan, Willoughby, Southmolton, Devon; 5, Upper North Place, Gray's Inn Road; and 50, Amwell Street.

Gilbert Pearse, Southmolton.

Baddeley, Thomas Bernard, 23, Seymour Street, Euston Square, Middlesex.

Henry Brayley Wedlake, 10, King's Bench Walk, Inner Temple.

Babington, George William Hopkins, 2, Woburn Square.

Thomas Metcalfe the elder, 5, New Square, Lincoln's Inn.

Bassett, Joseph, Oswestry, Salop.

Thomas Longueville Longueville, Oswestry.

Broughton, Edward Delves, 23, Bryanston Street, Portman Square.

John Swarbreck Gregory, 1, Bedford Row.

Bayly, Thomas Heatheote, Amptill, Bedford.

Ezra Eagles and John Eagles, Amptill, Bedford.

Bainbridge, Charles Hardy, Liverpool: Bedford Street, Holborn; and 12, Lloyd Street, Pentonville.

Matthew Dobson Lowndes, Liverpool.

Brice, Henry, City of Bristol: 9, Adam's Street, Adelphi; and 12, Wilmot Street, Brunswick Square.

William Diaper Brice, City of Bristol.

Bell, John Donaldson, Newcastle-upon-Tyne, and Hexham; and 3, George's Terrace, Surrey.

John Tinley, North Shields; assigned to William Carr, Hexham; assigned to Francis Seymour, Newcastle-upon-Tyne.

Burne, Henry Richard, Freeschool Street, Southwark; Hertford; and 2, New Boswell Court.

George Nicholson, Hertford.

Bevir, William Lawrence, Cirencester; and Lincoln's-Inn Fields.

George Bevir, Cirencester; assigned to William Henry Trinder, John Street, Bedford Row.

Bedwell, Obadiah Arrowsmith, Cirencester; and 6, Chester Place, Kennington.

George Bevir, Cirencester; assigned to Christopher Crouch the younger, Southampton Buildings.

Bolton, Thomas, Wolverhampton.

Thomas Moss Phillips, Wolverhampton.

Bleaymire, William, Penrith, Cumberland; 3, Sidmouth Place, Gray's Inn Road.

Thomas Dobson Bleaymire, Penrith.

Baynes, Edward Robert, Bedford Street.

John King, Buckingham.

Cream, Charles, Sandwich, Kent; 21, Brownlow Street; 20, Chenies Street; and 17, Gloucester Street.

Molton Messiter, Sandwich; assigned to T. Lyddon Surridge, Sandwich.

Cutcliffe, Wm. Elford, 11, Hand Court; and Barnstaple, Devon.

William Law, Barnstaple.

Currey, William Samuel, 10, Norfolk Street, Strand.

Wilmer Wilmer, Old Palace Yard, Westminster.

Chester, Frederick James, Newington Butts.

Henry Chester, the elder, Newington Butts.

Crossley, Rowland, Halifax; and Bradford, Yorkshire.

David Crossley, Bradford, Yorkshire; assigned to George Edwards, Halifax, Yorkshire.

Clayton, Sykes, Strand-on-the-Green, Middlesex.

Beauvor Brock, Loughborough.

Campion, William Gilbert, 2, Furnival's Inn.

John Serjeant, Ramsey, Huntingdon.

Clerks Name and Residence.
 Collins, Thomas, City of Worcester, 29, Norfolk Street; Strand; and 22, Great Ormond Street.
 Dawes, Henry, 8, Salisbury Street, Strand.
 Davison, Horatio William, 10, Virginia Terrace, Great Dover Street, Newington, Surrey.
 Dawson, Roger, Wigfawr, Parish of St. Asaph, Denbigh; 9, Great (Armond) Street; and 14, Milman Street, Bedford Row.
 Dixon, Richard Barnett, Preston.
 Dennis, William, Northampton.
 D'Arcy, John Ryce, 26, Red Lion Square.

To whom referred, assigned, &c.
 Charles Augustus Helme, City of Worcester.
 George Whitley, Birmingham, Warwick.
 Anthony Brown, Mincing Lane.
 Charles Walter Wyatt, St. Asaph, Flint; assigned to Richard Dawson, late of St. Asaph, Flint.
 James Dixon, Preston.
 John Hemman, Northampton.
 William Francis D'Arcy, Newton Abbot, Devon; assigned to James Hore, Lincoln's Inn Fields.

[To be continued.]

ORDER OF THE MASTER OF THE ROLLS, APPOINTING EXAMINERS FOR 1838-9.

Monday, the 16th day of April, 1838.

I do hereby order and appoint that John Baimes, Richard Mills, John Wainwright, and George Gatty, Sworn Clerks in Chancery, together with Thomas Adlington, Robert Riddell Bayley, Jonathan Brundrett, George Frere, James William Freshfield, James Hall, Bryan Holmes, William Lowe, Edward Rowland Pooking, Samuel White Sweet, William Tooke, and Richard White, Solicitors of the Court of Chancery, be Examiners until the last day of Easter Term, 1839, to examine every person (not having been previously admitted an Attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them), who shall apply to be admitted a Solicitor of the said Court of Chancery, touching his fitness and capacity to act as a Solicitor of the said Court. And I do hereby direct that the said Examiners shall conduct the Examination of every such applicant as aforesaid, in the manner and to the extent pointed out by the Order of the 27th day of July, 1836, and the Regulations approved by me in reference thereto, and in no other manner and to no further extent.

(Signed) LANSDALE, M. R.

SUPERIOR COURTS.

Lord Chancellor's Court.

PLEADING.—DEMURRER AND ANSWER.

To a bill for specific performance of an agreement, and for an account, &c., a demurrer was put in as to part of the account sought for, and an answer, purporting to be an answer to the other parts of the bill, but in effect applying to that part that was demurred to: Held, that the demurrer was overruled by the answer.

This was a case of demurrer and answer, to a bill filed by Andrew Costa, professor of music and singing, against Madame Albertazzi and her husband, for specific performance of an agreement entered into by the plaintiff with Madame Albertazzi's father and herself, and afterwards ratified by her after-taken husband; and it also prayed for an account of the gains made by Madame as a professional singer during certain periods of time. The facts of the case were these: In August, 1826, M. Costa met Madame Albertazzi, then Miss Emma Howson, at the house of a lady at Croydon, where Costa was giving musical instruction. Upon hearing the young lady singing, he was so pleased that he offered to give her some lessons gratuitously, and the offer was accepted. Sometime after, Costa proposed to Mr. Howson, the father of the lady, to take her as an articulated pupil, and accordingly, a memorandum of an agreement was drawn up on the 12th of January, 1828, "between Andrea Costa of Berwick Street, Soho, professor of music and singing, of the one part, and Francis Howson, of Croydon, also a professor of music, for and on behalf of Emma Howson, his daughter, aged twelve years and nine months, of the other part, as follows: First, for the consideration hereinafter mentioned, the said A. Costa shall and will, for the term of eight years, teach the said Emma Howson, the theory and practice of singing, the musical pronunciation of the Italian language, the gesture and expression of theatrical singing, &c., and will provide for her all necessary music books, &c., reserving always the property therein to himself; secondly, the said Emma Howson shall and will, during the term of eight years from the date of the agreement, conduct herself with punctuality and diligence, and conform to the regulations and mode of instruction adopted in the academy of the said A. Costa; and further, that she shall and will take all possible care of her voice and general health, and not permit any person to interfere with her musical instruction, or on any occasion exercise her musical talents, in public or private, without the consent of the said A. Costa; thirdly, in the event of the said Emma Howson being about to

marry at any time during the continuation of the said term, the said Francis and Emma Howson shall and will inform the intended husband of the existence of this agreement, and shall and will procure him to ratify the same; fourthly, from and immediately after the date in public of Emma Howson, the clear profits, save one-tenth part thereof, resulting from the exercise of her musical talents, after deducting all reasonable expenses, shall be equally divided between her, Emma Howson, and A. Costa; and with respect to the one-tenth part of such clear profits as aforesaid, Emma Howson shall be entitled to deduct and retain the same for her own use, as an equivalent for all expenses of dress which may be necessary for her; fifthly, in the event of Emma Howson being obliged in the exercise of her musical profession, to leave the country, and that A. Costa decline to accompany her, then she shall be entitled to retain two-thirds of the proceeds arising therefrom, out of which she shall pay all expenses, to the intent that the said A. Costa may have one clear third part of such proceeds; sixthly, all presents made to the said Emma at any time during the said term, except the same shall be in money, shall belong exclusively to her, but in case the same shall be in money, then the said A. Costa shall be entitled to a moiety thereof; seventhly, in the event of A. Costa getting up any musical compositions, either as concerts or otherwise, Emma Howson shall and will, unless prevented by professional engagements, take part therein gratuitously, the said A. Costa providing all requisites of music, coach hire, gloves and shoes, which she may require for the occasion; eighthly, should either A. Costa or Emma Howson, be prevented by any unforeseen or uncontrollable event, from strictly performing this agreement in the relative capacity of master and pupil, the time lost by such event shall not form part of the before mentioned term, but shall be replaced by an equal extension of time; ninthly, this agreement shall be considered as theatrical, and subject to all the usages by which such agreements are commonly interpreted." In October 1827, the defendant, Francis Albertazzi, proposed to become an articulated pupil to A. Costa, for the purpose of learning Italian singing, and accordingly, articles of agreement were signed by them. By the 11th of F. Albertazzi's articles, he obliged himself, in the case of his contracting marriage with any of the young ladies, professional pupils of A. Costa, to respect and observe their contracts. The event corresponded with A. Costa's foresight, for as the bill alleged "in consequence of the intimacy which had been contracted by the said Francis Albertazzi and Emma Howson practising together, within less than three months after the said Francis Albertazzi had been under the plaintiff's tuition, a marriage was duly had and solemnised between him and Miss Emma Howson." The marriage took place with the consent of Mr. Howson, Miss Howson being then a little more than thirteen years of age; but, previously to that ceremony, F. Albertazzi executed a memorandum ap-

proving of Miss Howson's affiance with Costa. Until 1831, as the bill stated, the parties continued to observe their agreement, but in May, in that year, some disputes having arisen, an agreement was signed, by which F. Albertazzi and A. Costa agreed that if to hasten the musical progress of Madame Albertazzi, it should be found by either of the said parties, that the said instruction should be given otherwise than in the academy of Costa, that would be allowed, but in such a manner as not to hurt the interest of the said academy; and in that case, the extra expenses resulting from it, shall be considered as expenses relative to the art, and paid out of the future musical gains of Madame Albertazzi, so as to lessen the respective gains of her and Costa. In June, 1831, the defendants left England without giving Costa notice, or holding any communication with him, until they returned to this country in April last. The bill next stated, that Madame Albertazzi had entered into an agreement with M. Laporte, manager of the Italian Opera, and had thereby made considerable profits, (having 100*l.* per month,) but refused to give Costa any account of these profits, or to admit his right to participate in them. The bill charged that, according to the construction of the agreement, the period during which the defendants were abroad, ought not to be reckoned as part of the eight years mentioned in the articles; and prayed for a declaration to that effect, and for specific performance of the articles; and for an account of the receipts of the defendants in respect of Madame Albertazzi's performances previously to June 1831, and from April 1837, till the time of filing the bill; and an injunction to restrain her and her husband from receiving any move of her salary from M. Laporte. There was a prayer in the alternative, if the Court should think the four years of absence ought to count in the term of eight years, for accounts of the gains during that period. To the part of the bill which prayed an account of profits made subsequently to the expiration of the term of eight years from the commencement of the contract in 1828, the defendants demurred for want of equity; and they put in an answer to other parts of the bill, and thereby insisted that the plaintiff had no right to call for an account of profits of Madame's gains after the expiration of the eight years from 1828, but they were ready and willing to give every information with respect to her gains during the eight years comprised in the agreement.

The demurrer having come on to be argued before the Vice Chancellor, Mr. Wigram (with whom was Mr. Edward Chitty,) after stating the allegations in the bill, for the defendants admitted the embarrassing and very difficult nature of a defence by demurrer and answer; but the parts of the bill demurred to and answered in this case were so distinct that this mode of pleading was necessarily adopted. Although no general demurrer had been put in, it was competent for him, upon this demurrer to part of the bill, to adduce arguments showing that the

Court had no jurisdiction to interfere. He distinguished this case from *Morris v. Colman*,^a and said it was clearly within the authority of *Kemble v. Kean*.^b The proprietors of Covent Garden Theatre had agreed with Mr. Kean, that he should act twenty-four nights at that theatre during a certain period, and no where else in London; and the Court held, that as it could not enforce the positive part of the contract, it would not restrain a breach of the negative part. The case of *Kimberley v. Jennings*,^c was to the same effect. But even if the Court had jurisdiction to give the relief sought in this case, the terms of the agreement would clearly uphold the demurrer. The articles were to be interpreted according to theatrical usage, and the question was, what was the theatrical construction of "an unforeseen and uncontrollable event?"—because it was only in case of the parties being prevented by such an event from performing their contract, that the time thereby lost was to be made up by extending the term. Was Madame Albertazzi's quitting this country to obtain better instruction, an unforeseen and uncontrollable event? If not, there was no pretence for extending the time beyond the original term.

Mr. Jacob and Mr. Wilcock for the bill, were stopped,—

The *Vice Chancellor* thought the defence, as it stood on the pleadings, incurably bad. The demurrer was only to discovery, and the reason was alleged to be, that the bill did not make a case entitling the plaintiff to any discovery or relief. But the defendants answered the same parts of the bill to which they demurred, and consequently the answer overruled the demurrer. In the answer, there was reasoning which was applicable to the ground of demurrer; for the defendants there insisted that the agreement expired in January, 1836, and that the period between June, 1831, and April, 1837, ought to be considered as forming part of the time during which the agreement was in force; and they insisted that the circumstances of their leaving England did not fall within the exceptions in regard to the time contained in the agreement, and that the plaintiff was only entitled to one moiety of the sums received by the defendants from June, 1831, to January, 1836, for which they were willing to account. All these parts of the answer applied to the parts of the bill to which the demurrer was put in, and had the effect of overruling it. His Honor accordingly overruled with costs, and refused leave to amend.

The defendants appealed to the *Lord Chancellor*.

Mr. *Wigram* and Mr. *E. Chitty*, for the defendants, cited the same cases and used the like arguments as they had urged before the *Vice Chancellor*; and they submitted that if the demurrer appeared to his Lordship not to be sustainable in its present form, they ought,

under the circumstances, to have leave to amend it, and to withdraw so much of the answer as affected the demurrer.

Mr. *Wilcock* for the plaintiff insisted that the demurrer was incurably bad, and opposed the application for leave to amend.

The *Lord Chancellor* was satisfied that the demurrer was bad; but as the defendants' counsel alleged that it was so by a mere slip of the pleader, he gave leave to amend it, without extending it to any part of the bill beyond what was originally intended to be covered by it, without withdrawing any part of the answer.

The amended demurrer coming to be argued before his Lordship, Mr. *Wigram* and Mr. *E. Chitty* again stated the agreement, and in addition to the cases before referred to, as to the jurisdiction of the Court to enforce the contract, they cited the following cases as to the admissibility of evidence for the construction of the contract: *Attorney General v. The East India Company*,^d *Smith v. Wilson*,^e *Richardson v. Watson*,^f and *Goblett v. Becchey*.^g The demurrer as now amended, went to that part of the bill and prayer calling for any discovery after the first eight years expired. The plaintiff asked that four years and half a year be added from the defendant's return in 1836, to the three years and a half which elapsed from the date of the contract to the departure of the defendants to Italy in 1831. The defendants were not bound to give discovery after the expiration of the eight years; and although the answer talked of the subsequent time, that was not answering. Upon the form of the Pleadings, they cited *Tring v. Edgar*,^h *Jones v. Lord Strafford*,ⁱ *Devonshire v. Nevenham*,^j *Mitford's Pleadings*, 241 and 299; and *Beames on Pleas*, 37.

Mr. *Wilcock* was proceeding to answer the arguments; but

The *Lord Chancellor* stopped him, and said he could not allow the demurrer. There was first a breach of the contract by the defendants in going abroad, and in that the plaintiff had a right of action. The demurrer is not to discovery only, but to all relief, and is therefore bad; for he is clearly entitled to some discovery. The defendant says, the interruption in the contract was the fault of the plaintiff, but he alleges the contrary, and in that point an issue of fact is raised between them. The defendant demurring to relief, joins issue in a material fact. The demurrer must be overruled.

Costa v. Albertazzi, Sittings at Lincoln's Inn before the *Vice Chancellor*, December 11, 1837; and before the *Lord Chancellor*, February 9, and March 7, 1838.

^d 1 Anstr. 39.

^e 4 B. & Ad. 787.

^f 2 Sim. & S. 274.

^g 12 Scho. & Lef. 199.

^h 3 B. & Ad. 728.

ⁱ 3 Sim. 24.

^j 3 P. Wms. 76.

^a 18 Ves. 437.

^b 6 Sim. 333.

^c 6 Sim. 348.

Queen's Bench.

[Before the Four Judges.]

POOR LAWS.

Though the Commissioners under the Church Building Act, (10 Anne, c. 11,) formed the parish of St. Andrew's, Holborn, into two districts, and called them by the names of St. Andrew, Holborn, above Bars, and St. George the Martyr, and declared them separate parishes for ecclesiastical purposes, —though several acts of parliament have since described them as "united parishes," and though the Poor Law Commissioners had, in an order made by them, used the same expression, yet as they originally formed but one parish, and never had been effectually separated for the purpose of the relief and maintenance of the Poor; this Court held that they must be considered but as one parish, and ought therefore, under the 26th section of the 4 & 5 W. 4. c. 76, be directed (without the consent of the guardians, as required by the 32nd section in the case of a previously existing union) to unite with other places to form a union under the provisions of the last mentioned statute.

In this case a rule had been obtained for a *certiorari* to bring up an order of the Poor Law Commissioners, that it might be quashed. The order in question was dated on the 29th of March, 1836, and directed that upon the 27th of April, the parishes and places called "St. Andrew's Holborn above Bars, united with St. George the Martyr, and the Liberty of Saffron Hill, Hatton Garden, Ely Rents, and Ely Place, shall be, and thenceforth remain united for the administration of the laws for the relief of the poor, by the name of the Holborn Union." The order then went on to make other directions, and spoke of "the workhouse of the united parishes of St. Andrew Holborn, and St. George the Martyr," and contained this sentence as to the construction of the words used in the order: "Wherever the word 'parish' is used in this order, it shall be taken to include any thing, hamlet, or place, separately maintaining its poor, and hereinbefore directed to be united." The objection raised to the validity of the commissioners' order was, that the parishes of St. Andrew's Holborn and St. George the Martyr, were distinct parishes, united under a local act of Parliament, and consequently, that under the 41st section of the Poor Law Amendment Act, the commissioners had no authority to make the order that two parishes already united should form part of a new union, without first obtaining the consent of two thirds of the guardians, under the 32nd section of that statute.

The Attorney General, Sir W. Follett, Mr. Wightman, and Mr. Tomlinson, shewed cause against the rule. The authority of the commissioners to make this order, depends in the first instance on the 26th section of the Poor Law Amendment Act. As to their general right there is no dispute. But it is said that

the 32d section imposes a difficulty on them. That section declares that where two or more parishes are already united, the commissioners may alter, add to, or dissolve such union, "provided that no such dissolution, alteration, or addition, shall take place, unless a majority of not less than two thirds of the guardians of such union shall concur therein." The question then is, whether the district known as St. Andrew's, Holborn, and St. George the Martyr, can be said to be two united parishes? It is submitted that they cannot claim to possess that character. There is no proof that they were ever separate parishes. Shortly after the passing of the 13 & 14 Car. 2, c. 12, the parish of St. Andrew's, Holborn, was for convenience divided into three townships or liberties, but all these liberties constituted but one parish; and the fact is, that the funds for the relief of the poor are jointly assessed and collected. The great point to be relied on by the other side is, that in certain local acts of parliament they have been called "the united parishes;" but that mere expression, contradicted as it is by usage, and unsupported by any distinct legislative enactment creating them distinct parishes, will not suffice to support this objection. Distinct parishes they must have been, for otherwise their union will not fall within the meaning of that word in the 109th section, which restricts its operation to "parishes united." These districts were not parishes, but parts of one parish, for all (except some ecclesiastical) purposes,—which do not affect the present question.

Sir F. Pollock, Mr. Erle, Mr. Busby, and Mr. Thomas, in support of the rule.—The meaning of the word cannot be restrained by the use of that term in the 109th section of the Poor Law Act. That section is simply explanatory, not restrictive. But even if the argument on the other side could be supported on this point, then it is clear that these places are not merely districts forming a parish, but are distinct parishes, and have been united for the purposes of administering relief to the poor. The commissioners under the Church Building Act, 10 Anne, c. 11, created these districts separate parishes for ecclesiastical purposes, and gave them the separate names which they now bear. They are therefore separate parishes. The legislature has in repeated instances so treated them. Thus, for example, in the Paving Act, 11 Geo. 3, c. 22, the first section calls them the "parishes of St. Andrew Holborn, above Bars, and St. George the Martyr." In the local act settling the dispute between these parishes and Lincoln's Inn, they are so described; and the same terms are employed respecting them in other local acts. But this is not all. The commissioners themselves, in this very order, have described them in these very terms, "the united parishes." Surely they cannot be allowed now to contradict their own description of these parishes. Then the cases of *The King v. The Poor Law Commissioners, in the matter of the Whitechapel Union*; and *The King v. The Poor Law Commissioners, in the matter of*

the Parish of St. Pancras, shew, first, that the extent of population of a parish is recognised as an objection to such parish being formed into a union with others; and secondly, that where the act has not clearly given the commissioners the power to change the existing state of things,—more especially if that state of things exists under a local act of Parliament,—this Court will not assist them. Both these circumstances apply here in opposition to this order.

Lord Denman, C. J.—After stating the nature of the order, and the questions raised upon it,—said, the 32d section imposes difficulties upon the commissioners in the way of making a union; and the question is, whether this case comes within the exception contained in that section. We have come to two decisions on other parts of this statute, and both these have been quoted on the present occasion; but we think that they do not apply. With respect to the St. Pancras case, we thought that the commissioners had not the power to unite with others a parish having already a local board of guardians, established under the authority of a local act of parliament. The question here is, whether either of these districts can be considered as a parish having a local board, or whether both together do not form but one parish. If the first part of this question could be answered in the affirmative, then the St. Pancras case would apply. Can it be so answered? We shall see that presently. Then we have been pressed with another case, in which we are supposed to have proceeded on the principle that the construction of the Poor Law Amendment Act, as to the power of the commissioners to make these orders, might be varied by the circumstance of their applying to places with a greater or a less population. We said nothing of the sort. We merely suggested that in deciding on what should be the powers of the commissioners, the legislature might have been somewhat guided by the consideration of the greater or smaller population of the districts to be united. We disclaim altogether all right to give a different meaning to words from that which they ordinarily bear, merely because we may happen to think that such meaning would best effectuate the object we may believe the legislature to have had in view. As a rule, we should give to words in any statute their ordinary meaning; but the reason for that rule is doubly strong with respect to this statute, where the difficulties of construction are great enough in themselves; so that it is absolutely necessary that we should give the fair and natural construction to such words as the legislature has thought fit to employ; and we are by no means inclined to take the unwarrantable liberty of varying that construction for the purpose of making the act consistent with what may be our views of the probable intention of the legislature. We do not deny that we have recognised it as the policy of the act not to interfere more than is necessary with existing regulations. In the St. Pancras case we carried that principle some way. Without

departing from it here, let us see whether this is really a union of parishes or not. It appears that originally the whole was but one parish, and that though it now bears two names, it is but one body for the purpose of the relief and maintenance of the poor; and never was any thing but one parish, except for certain ecclesiastical purposes, specially provided for under one local act of parliament. The division of a parish into districts, for the more convenient management of its own poor, will not of itself make each of those districts a separate parish. Nothing more than that has been done here; and that being so, the mere misnaming of the districts in certain local acts of parliament, will not alter their relations to each other, or to the world at large. It is clear, therefore, that the exception in the 32nd section does not apply: that the order is good, and that this rule for a *certiorari* must be discharged.

The other Judges concurred.

Rule discharged.—*The Queen, in the matter of the Holborn Union, v. The Poor Law Commissioners*, H. T. 1838.—Q. B. F. J.

Queen's Bench Practice Court.

PRIVILEGE OF ATTORNEY.—1 VIC. c. 56, s. 4.

—WAIVER.

An attorney is entitled to be sued in his own Court, notwithstanding the 1 Vic. c. 56, s. 4.

A plea of such privilege cannot be treated as a nullity by a plaintiff; but if the privilege should have been waived, the waiver must be replied.

Miller had obtained a rule nisi for setting aside a judgment, signed for want of a plea, against which,

Archbold shewed cause. It appeared that the defendant was an attorney of the Court of Common Pleas, and had pleaded his privilege to be sued in his own Court; but the plaintiff had treated this plea as a nullity, and had signed judgment as for want of a plea. The question now was, whether, since the act of 1st Vic. c. 56, s. 4, an attorney had a right to plead such a privilege, and also, whether the plaintiff was right in treating the plea as a nullity; or whether he ought not to have applied to the Court. It was submitted, that the statute had abolished the privilege sought to be set up. The section alluded to provided that any person who should have been admitted an attorney of any one of her Majesty's Courts, should be at liberty to practise in any other of her Majesty's Courts, although he might not have been admitted an attorney thereof; and no person having been duly admitted an attorney or solicitor in any of her Majesty's Courts of Law or Equity at Westminster, should be prevented from recovering or receiving the amount of any costs which would otherwise have been due to him, by reason of his not being admitted an attorney or solicitor of the Court in which such costs should have been incurred; provided always, that any attorney or solicitor practising in any Court of Law or Equity, shall be subject to the jurisdiction of such Court, as

fully and completely, to all intents and purposes whatever, as if he had been duly admitted an attorney or solicitor of the said Court. Under this section, an attorney must be considered, in contemplation of law, as attending on all the Courts, and no privilege, therefore, of one Court, could be considered as opposed to the privilege of another.

Patteson, J.—The statute gives the attorney permission to come here voluntarily; but he cannot be compelled to come here.

Archbold submitted that the reason of the privilege was, that the attorney was supposed to be always in attendance upon the particular Court; but by the operation of this section of the act, he was in fact made an attorney of all the Courts, and could not, therefore, exercise any particular privilege granted him as being attached to one only.

Patteson, J.—There is no doubt that an attorney of the Common Pleas could bring an action in this Court; and he would be liable to the jurisdiction of this Court in respect of all matters connected with that action; but would this Court be able to interfere with him, in the event of any client applying against him in respect of some matter not done in the action?

Archbold urged that this suggestion did not necessarily decide the question in the present case. As soon as an attorney could sue in all the Courts, the reason of his privilege ceased, and his privilege, therefore, ceased too. Then with regard to the second question: If the plea were merely demurrable, the plaintiff had no right to strike it out and treat it as a nullity; but here the plea was a nullity, and had been destroyed by the statute. The plaintiff was therefore right in signing judgment. Various cases would be relied upon, on the other side; and there was, first, the case of *Allen v. Walker*, 5 D. P. C. 460, in which the Court held, that in an action by the indorsee against the indorser of a bill, a plea that the defendant did not draw the bill, was not a nullity, so that the plaintiff might sign judgment as for want of a plea, and the reason given for this decision was, that the plea was only demurrable, as in contemplation of law every indorser was a new drawer of a bill. *Cropper and others v. Jones*, 4 D. P. C. 591, was another case, and there it was held, that the mere fact of a plea being clearly insufficient in point of law, was no ground for signing judgment as for want of a plea. But this case came within the same admitted principle. But on the other hand, there was the case of *Hopgood v. Wright*, 2 N. R. 188, which was trespass against B., C. and D., for turning A. out of his house, and keeping the house and goods from him; and the defendants pleaded that A. had nothing in the said house and goods, but "jointly and undividedly with D.," and judgment signed as for want of a plea was held right. And again in *Mucher v. Billing*, 3 D. P. C. 246, the general issue was pleaded to a part of a declaration, and the Statute of Limitations to the remainder, without the signature of counsel, and the whole plea was held to be a nul-

lity. *Warner v. Berrisford*, 4 D. P. C. 364, was a case in which the Court held a rule to plead in a wrong name to be a nullity; and in *King v. Myers*, 5 D. P. C. 686, a plea of "never did promise," in an action of debt, was also held a nullity. Here the plea was as much a nullity as in any of the cases cited.

Miller, contra.—The object of the section was to extend, and not to diminish the privileges of attorneys, and was therefore far from abolishing the right to plead privilege in abatement. It must be construed liberally, and as the privilege had formerly existed, it could not be taken away without express words. The only difference which the new act made to an attorney was, that it relieved him of the necessity of the payment of fees, for he might before have been admitted as an attorney of all the Courts. But although he thus might go into all the Courts, if he desired it, he was not compelled to go into any one unless he thought proper. If the attorney were to come into this Court and conduct a cause, and an action were afterwards brought against him here, it might be admitted that his conduct would amount to a waiver of his privilege, but then the waiver should be replied. *Jones v. Bodman*, 1 Lord Raymond, 135, was a decision to this effect. With regard to the second point, it would be found that the pleas which were held to be nullities, were either in direct contravention of an act of parliament, or of a rule of Court. But here this distinction did not apply. *Cropper v. Jones*, was a case directly in point. The question was, whether the plea was sufficient, and that must be decided on demurrer, and not by the plaintiff himself.

Patteson, J.—In *Cropper v. Jones*, the question was not whether the plea was a nullity, but whether it was a sham plea, which the Court would set aside on application; and I do not think therefore, that it has anything to do with the question here.

Miller.—The plea here was good, and could not be treated as a nullity by the plaintiff, so as to entitle him to sign judgment.

Cur. adv. vult.

Patteson, J., said that he was quite satisfied that the utmost effect which could be given to the statute was, that if an attorney of one Court should practise in another, he would become subject to the jurisdiction of that Court for anything that he did in his professional capacity in the action; and it might be a question, whether he would not render himself an attorney of the Court so far as to be amenable in any matters connected with his character of attorney. This was the very utmost, at all events, to which the provision could be carried, and he was not prepared to say, even that it should be carried so far. The act, by its own operation, did not render the attorney liable to the process of another Court, so as to destroy his privilege; and if it could be said that he had done anything, by which he had waived his privilege, that was matter of fact and must be replied. If, therefore, the plaintiff never meant to say that the

defendant had done any act so as to render himself so amenable, it was his duty to reply it. The pleas must stand; and as it was a strong measure to sign judgment as for want of a plea, the judgment must be set aside with costs.

Rule absolute.—*Prior and another v. Smith*, H. T. 1838. Q. B. P. O.

Exchequer.

PLEADING ISSUABLY.

Where a defendant is under terms to "plead issuably," &c., he is restricted only as regards the pleas, and not with reference to subsequent proceedings.

J. L. Adolphus shewed cause against a rule which had been obtained by *Whateley*, for setting aside the judgment signed in this cause, for irregularity. It was an action on an attorney's bill, and the defendant obtained further time to plead on the usual terms of pleading issuably, &c. He then pleaded that no signed bill had been delivered, and the plaintiff replied, alleging that a signed bill had been delivered, and concluding with a special traverse to the country, to which he added a *similiter*. The defendant, however, struck out the latter, and demurred specially to the replication for duplicity. On this the plaintiff signed judgment, on the ground that the terms not only extended to pleading, but to all subsequent proceedings. It was now contended that the judgment was rightly signed by the plaintiff, as the demurrer was frivolous.

Parke, B.—You should have applied then to set it aside.

Adolphus.—Although from *Dewey v. Sopp*, 2 Str. 1184, the defendant, it appeared, was not obliged to join issue to the country, except in a case where a reasonable issue presented itself, yet the defendant was precluded from raising any objections of which he could not have taken advantage on general demurrer. *Bell v. De Costa*, 2 B. & P. 446. *Sawtell v. Gillard*, 5 D. & R. 620, was a strong case in point, the circumstances of which were similar to those of the present case; and there *Abbott, C. J.*, laid down the general rule, and said, "where a party has obtained time, on terms of pleading issuably, and by his pleading fails to bring the merits of the case or some question of fact, or some question of law arising on the facts, in issue, he does not comply with the conditions of the order. Then the defendant was bound to plead issuably, instead of which he demurs to the replication specially upon a collateral circumstance." *White v. Giens*, 6 M. & S. 415, decided that the defendant being under terms to plead issuably, must plead such a plea as he intended to abide by; and *Langford v. Wughorne*, 7 Price, 670, shewed that a demurrer at all events must be fair and *bond fide*. The only authorities which could be cited on the other side, were *Betts v. Applegarth*, 4 Bing. 267, and *Barker v. Glendon*, 5 1). P. C.; but the latter was the opinion of a single Judge only.

Whateley, contra, contended that the venue in the action being laid in Northumberland,

the eight days' time to plead, which was originally given, was too short to admit of the defendant's pleading in the ordinary course of proceeding, and the Court therefore granted him no extraordinary favor in allowing him further time, on condition of his pleading an *issuable* plea. The meaning of that was, however, that his plea should tender an issue. The effect of *Dewey v. Sopp* was, that a party must not demur for delay, but for good cause. *Sawtell v. Gillard* could not be considered law now, while the case of *Barker v. Glendon* was directly in point. The judgment of *Best, C. J.*, in *Betts v. Applegarth*, was very strong in favor of the defendant. He said "the order for time under the terms of pleading issuably must apply to the existing state of the cause at the time it is issued, and does not extend to cover subsequent errors. If it did, the parties might go on blundering to the end of the cause."

Cur. adv. vult.

Parke B., subsequently gave judgment. On reference to the other Judges, they were all of opinion that the true construction of the common order for time to plead, upon terms of pleading issuably, applied to the plea only, and not to the subsequent proceedings. The authorities therefore, of *Betts v. Applegarth*, and of *Barker v. Glendon*, was admitted.

Rule absolute.—*Woodman v. Goble*, H. T. 1838. Excheq.

THE EDITOR'S LETTER BOX.

The point urged by "A Law Student," in a letter addressed to the Examiners, has been stated in various ways, over and over again, in these pages. It will do no good to press the matter further at present. If our correspondent thinks that the examiners have not considered the subject, he can write to them through their secretary, or give in his statement when he comes up to be examined.

A correspondent (E.) who "agrees in the suggestion that the examiners ought now to be left to pursue their own course in conducting the examinations, they having hitherto exercised a sound discretion," objects to the number of double notices which have been given for the Easter and Trinity Terms, "as it exaggerates the number of candidates for each Term, and is unfair towards those who have given *bond fide* notices, and go up for examination on a supposition, that in consequence of their previous application and industry, they will be enabled to obtain certificates." We do not see any objection to this practice, especially where the object is to avoid being thrown over the long vacation. The majority of the candidates are so confident of their success, that the practice will not become general.

The bills of parliament relating to the law, remain in the same state as last week. See the list at p. 463, with notes of the several stages which the bills have reached.

The letter relating to bankers' cheques will probably be inserted in next week's Number.

The Legal Observer.

SATURDAY, APRIL 28, 1838.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE COUNTY COURTS BILL.

We are now in possession of Lord John Russell's bill for the improvement of the County Courts, and we have no hesitation in characterising it as one of the most important bills, as far as our profession is concerned, that has ever been introduced. We have printed a portion of it in a subsequent part of the present number, and we shall now briefly state its nature and objects; and our readers may depend on us for keeping a vigilant eye on its future progress.

Its first object is to make certain alterations in the Court of Quarter Sessions. Intermediate Sessions are to be held in every county (except in Middlesex, where the sessions of the peace are to be holden as heretofore), and the justices at these intermediate sessions are to have the same powers as the ordinary quarter sessions. But the sessions is to be restrained from trying certain offences, viz. treason, murder, or capital felony, and certain other offences mentioned in the second section. It is further provided that where the justices in quarter sessions assembled shall resolve to have a salaried chairman and judge of the county court, under the act, at a not less salary than £1,000, the clerk of the peace shall send a copy of such resolution to one of the Secretaries of State; and upon such communication the crown may appoint a barrister of not less than seven years' standing, as a justice of the peace, and judge of the county court; but no barrister so appointed is to assist in levying any county rate, or in granting licenses to inns. The Judge of the County Court, however, is to sit as chairman of the court of quarter sessions, for the trial of all offences which they have the power to try; and if necessary, more than one judge may be appointed, and

in such case the justices shall make regulations for dividing the business of the criminal and civil court between the judges so appointed, subject to the approval of the crown. The judges' salaries are to be paid quarterly: the amount is left blank in the bill, but is to be subject to a certain maximum; and a superannuation allowance is to be provided, which, as well as the salary, is to be paid out of the county rate.

The Judge being appointed, a commission is to be issued to certain of the justices to divide the county into so many districts as they shall think convenient, and to appoint some principal town in each district, as the district town; and no part of such district is to be distant more than ten miles, in a straight line, from the district court; and these divisions are to be approved of by the Queen in Council, and published in the Gazette. The justices are to provide district courts, and a circuit is then to be made through the districts, the expenses of which are to be paid out of the county rate.

The justices are also to regulate the attendance of the high constables and others, and are to amend the warrants, precepts, and returns of jurors, and a jurors' book is to be made out for each district. The jurors are to be summoned from the district where the jury is summoned; but jurors in other respects are to be summoned as heretofore.

The next important matter provided for by the bill, is the jurisdiction of the new court, which is to hold plea without any writ before the judge appointed, of all personal actions where the debt or damage does not exceed the sum of 10*l*. All pleas in any such County Court, except pleas holden by writ of *justicies*, shall be heard in a summary way by the judge and suitors, who shall have power to make such

order thereon if as shall appear to the Court a majority of them so assembled, to be just and agreeable in equity and good conscience." The Court is to be holden twice at least in every quarter of a year at the district court of each district, and at such other times as shall be appointed by the justices. All plaints which shall be entered in any County Court, shall be entered within six calendar months after the passing of the act, or within three years after the cause of action shall have arisen. All persons qualified to serve as jurors in the court of sessions, shall be deemed suitors of the County Court; a certain number of whom, not more than five, nor less than three, shall be sworn to give their verdict in each case. All suits shall be deemed to arise in the county, and shall be tried in the district wherein the defendant shall dwell at the entry of the plaint, and demands shall not be split to bring them within the jurisdiction of the Court.

The bill next provides for the appointment and salaries of registrars, bailiffs, and the inferior officers of the new court, and the registrars are to issue summonses and warrants, and to register all orders of the Court.

The form of proceeding is next provided for. The plaintiff in any suit is to enter either in an office to be provided for that purpose, within the district, or at a Court holden for the district, a plaint in writing, and thereupon a summons shall be issued under the seal of the judge, the form of which is given in a schedule to the bill, and shall be served on the defendant seven days before the day on which the County Court shall be holden at which the cause shall be tried; and delivery of such summons to the defendant, or at his usual dwelling place, shall be deemed good service; and every such summons shall be read over at the time of the service. The judge is further to frame the form of proceedings. No privilege is to be allowed to exempt any person from the jurisdiction of such county court, and minors are to be enabled to sue for wages. On the day named in the summons, the plaintiff, or some person on his behalf, shall appear in the Court, and the defendant shall be required to answer such plaint; and on answer being made in Court, the Court shall proceed in a summary way to try the cause, and give judgment without further pleading. No barrister, attorney, solicitor, or other person, shall be heard as advocate for any other person, except in proceedings under any

writ of justice; and no person shall be entitled to demand any sum of money for appearing on behalf of any other, where the demand shall not be more than 5*l.* nor to demand more than 1*0*s.** when the sum is above 5*l.* When the defendant does not appear, the court shall make a conditional order. Either party may obtain summonses to witnesses, with or without a clause requiring the production of books and papers in their possession, and the Court, on the trial, may examine on oath the parties to the suit, and all other persons whomsoever, without regard to objections on the ground of incompetency from interest. No plaint, nor any order thereon, shall be removed into any Superior Court, but shall be final; but the judge shall have power to order a new trial to be had in any such suit at the next County Court, and in the mean time to stay proceedings; but a verdict on a second trial shall be final. The fees of the Court are to be regulated by schedule, and are to be accounted for by the officers of the Court to the justices. Minutes of all the proceedings of the Court are to be kept.

The next great point is the manner in which the orders of the Court are to be executed. Wherever the Court shall make an order for the payment of money, the Court may, in case of default or failure, award execution against the goods and chattels of the party; and the registrar shall forthwith issue a precept to one of the bailiffs, who shall levy by distress and sale of the goods and chattels of the party, such sum of money and costs as shall be ordered; and execution against the body may issue after execution against the goods. It is also provided that debts and wages may be attached. Possession of small tenements, whereof the rent does not exceed 10*l.* by the year, may be recovered by plaint in the County Court, and the mode of recovery therein is particularly provided for.

Protection is also to be given to the officers of the Court; and where a person shall commence an action in a Superior Court for any cause for which a plaint might have been entered in the County Court, and the verdict shall be found for a sum not exceeding 10*l.*, the plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall be found for the defendant, he shall have double costs, unless the judge shall certify to the contrary. All actions are to be had and tried in the county where the fact was committed, and shall be commenced within six

The County Courts Bill.

calendar month after the fact committed; and notice in writing of such action shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover if tender of sufficient amends shall have been made, or if a sufficient sum of money shall have been paid into court.

We have now brought before our readers the general scope of the measure, which fully demands their attentive consideration.

The following is the first part of the bill:

It is intitled "A Bill for the Improvement of the Criminal and Civil Jurisdiction of County Courts," and recites that justice requires that all persons charged with offences be brought to trial as speedily as possible, and it is fitting that persons learned in the law should preside at such trials:

And that it will be for the relief of many persons, as well creditors as debtors, if the jurisdiction of the County Court for the Recovery of Small Debts and in civil actions be extended and improved.

It is therefore proposed to be enacted as follows:

1. *Intermediate Sessions.*—That the justices of the peace in every county, *except Middlesex*, shall, in every quarter of the year, beginning from the feast of Michaelmas next coming, hold within and for their county, besides the general quarter sessions of the peace, a session of the peace on such day as shall be appointed by the said justices, at the quarter sessions next before such additional session, and published in such manner as they shall direct, for the purpose of making the same to be generally known within the county; and the said justices, or two of them at the least, at and in every such session, shall have full power and authority to inquire of all offences and appeals against any order or conviction by one or more justices which may be inquired of at any general quarter session of the peace for that county, and to hear and determine the same, and for that purpose and for all things thereunto belonging, or to any judgment or execution thereupon, shall have the same power and authority which they or any two of them have in general quarter sessions assembled; and in the county of *Middlesex* the sessions of the peace shall be holden as hath been accustomed.

2. *Offences excepted.*—That the justices of the peace acting in and for any county, and the recorders of cities, towns and boroughs, shall not at any session of the peace, or at any adjournment thereof, try any person or persons charged with any treason, murder or capital felony, or with any felony punishable with transportation beyond the seas for life, except felonies committed by any person pre-

viously convicted of felony, but not otherwise punishable with transportation for life; nor shall the said justices or recorders try any person or persons charged with any of the following offences; (that is to say)—

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person or government, or against either House of Parliament.

3. Offences subject to the penalties of perjury.

4. Blasphemy and offences against religion.

5. Administering or taking unlawful oaths.

6. Perjury and subornation of perjury.

7. Making a false oath or affirmation, so as to be liable to the punishment of perjury.

8. Forgery.

9. Unlawfully and maliciously setting fire to crops of corn, grain or pulse, or to any part of a wood, coppice or plantation of trees, or to any heath, gorse, furze or fern.

10. Bigamy and offences against the laws relating to marriage.

11. Abduction of women and girls.

12. Endeavouring to conceal the birth of a child.

13. Offences against any provision of the laws relating to bankrupts and insolvents.

14. Composing, printing or publishing blasphemous or seditious libels.

15. Malicious defamation.

16. Bribery.

17. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try, when committed by one person.

Provided that nothing herein contained shall be construed to alter or affect the authority of the justices of the peace acting in and for the cities of *London* and *Westminster*, the Liberty of the *Tower of London*, the borough of *Southwark*, and the counties of *Middlesex*, *Essex*, *Hert* and *Surrey*, with respect to offences committed, or alleged to be committed, within the jurisdiction of the Central Criminal Court.

3. *Parts of Counties.*—That the isolated parts of counties which are described in a certain schedule marked (M.) annexed to an act passed in the third year of the reign of his late Majesty, intituled, "An act to settle and describe the divisions of counties, and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament," shall be considered to all intents and purposes as forming parts of the respective counties and divisions which are respectively mentioned in the fourth column of the said schedule (M.) in conjunction with the names of such isolated parts respectively, and that every part of any county which is detached from the main body of any such county, but for which no special provision was made by the last-recited act, shall be considered to all intents and purposes as forming part of that county, and of that division, riding or parts of a county whereby such detached part shall be surrounded, but if any such detached part shall

be surrounded by two or more counties or divisions, ridings or parts, then as forming part of that county or division, riding or parts with which such detached part shall have the longest common boundary: Provided, that all offences committed in any such detached part before the passing of this act may be tried, and all arrears of county rate assessed before the passing of this act may be levied and recovered as if this act had not been made.

4. That every such detached part of a county which under the provisions hereinbefore contained shall be considered as part of any other county shall be considered to all intents and purposes as part of the hundred, wapentake, lath, rape, ward or such other division whereby it shall be surrounded in the county of which it shall be considered as part and of none other, or in case such detached part shall be surrounded by two or more hundreds, wapentakes, lathes, rapes, wards or such other divisions, then as forming part of the one with which it shall have the longest common boundary, and of none other.

5. *Appointment of Justices of Peace.*—That no person in England or Wales to whom her Majesty shall not have granted her commission to act as a justice of the peace shall have authority to act as a justice of the peace, except in the city of London and the liberties thereof, and except also the mayor of every borough named in 5 & 6 W. 4, c. 76, during his mayoralty, and during the year next after his mayoralty, and except also the recorder of each of the said boroughs to which a separate Court of quarter sessions of the peace shall have been granted, so long as he shall be such recorder; and every place which before the passing of this act was within the exclusive jurisdiction of any justices whose jurisdiction is hereby taken away, shall after the passing of this act be within the jurisdiction of the justices of the county, riding, parts or divisions, who but for such exclusive jurisdiction would have had jurisdiction therein before the passing of this act.

6. Recognizances to be obligatory to appear at assizes.

7. *Chairman.*—That in every county in which the justices in quarter session assembled shall resolve that it is expedient to make provision for the appointment of a salaried chairman of the court of quarter sessions and judge of the county court under this act, at such salary as shall be mentioned in the resolution, not being less than the sum of £100, and shall order that such resolution be enrolled among the orders of sessions, the clerk of the peace shall enroll the resolution accordingly, and shall forthwith send a copy of such enrolled resolution to one of her Majesty's Principal Secretaries of State, and shall also publish such resolution in such manner as the justices shall direct, for the purpose of making the same to be generally known within the county.

8. That the following provisions of this act shall be taken to apply to every county in which the justices shall have so resolved, and to none other; and in the interpretation of the whole of this act, the word "county," unless

where counties of cities or counties of towns are specially mentioned, shall extend to every county in England and Wales, except counties of cities and counties of towns, and shall also extend to the ridings of the county of York, and to the parts of the county of Lincoln, as if each riding and each of the said parts were a separate county.

9. *Judge of County Court.*—That as soon as a copy of any such resolution shall have been received by the Secretary of State, it shall be lawful for her Majesty to appoint a barrister, of not less than seven years' standing, to be a justice of the peace, and judge of the county court in that county; and as often as there shall be a vacancy of the office of the judge of the county court, it shall be lawful for her Majesty to appoint another barrister of not less than seven years' standing, to succeed to the said office; and every barrister so appointed shall be entitled to act as a justice of the peace, although he may not be qualified by estate, and to hold his office during his good behaviour therein: Provided, that no barrister so appointed shall have power to make or levy, or to assist in making or levying any county rate, or rate in the nature of a county rate, or to grant or transfer, or assist in granting or transferring any licence or authority to any person to keep an inn, ale-house or victualling-house, to sell exciseable liquors by retail.

10. That the judge of the county court, whenever he shall be present at any session of the peace in the county for which he shall be appointed, shall sit as chairman of the court for the trial of all offences and appeals against orders and convictions which the Court shall have power to try; and shall also, in the absence of all the other justices, have alone the same authority for trying all such offences and appeals, and for passing sentence and giving judgment, and in all things thereunto belonging, which the said justices or any two of them have in quarter session assembled.

11. That it shall be lawful for the said justices, if they shall see fit, to recommend in their said resolution, or by any subsequent resolution to be made, enrolled and communicated to the Secretary of State in like manner, that more than one such judge be appointed for their county; and in such case it shall be lawful for her Majesty to appoint as many barristers of not less than seven years' standing as shall be named in such resolution, and in every case of vacancy, to fill up such vacancy as aforesaid; and every barrister so appointed may act as a justice of the peace, although he be not qualified by estate, and shall be a judge of the county court under this act, and shall hold his office during his good behaviour therein: Provided always, That where more than one such judge shall have been appointed in any county, the number of judges may be reduced by her Majesty, as vacancies shall happen, upon petition, by the justices in quarter session assembled, but so nevertheless that at least one such judge shall continue to be appointed as aforesaid in that county.

12. *Regulations.*—That in case the justices

shall recommend that more than one judge shall be so appointed for their county, the justices shall also make regulations, subject to the approval of her Majesty, for dividing the business of the criminal and civil court of that county between the judges so appointed; and the regulations so made and approved shall be binding on the judges of the county court of that county when appointed.

13. *Salaries.*—That the salary of every judge appointed under this act, shall be paid out of the county rate by four equal quarterly payments, on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October; and every such judge, and his executors and administrators, shall be entitled to such proportional part of his yearly salary as shall accrue in any number of days during which he shall hold the office of judge of the county court, between any two successive days of payment.

14. That in case any judge of any county court shall, from confirmed sickness, age or infirmity, become incapable of executing his office, and shall offer to resign his office, it shall be lawful for the justices to resolve and to signify to her Majesty, that they are willing, in case her Majesty shall be pleased to accept his resignation, to grant him an annuity by way of superannuation allowance; and if her Majesty shall be pleased thereupon to accept such resignation and to approve such resolution, there shall be paid and payable to such judge out of the county rate of that county an annuity, calculated upon the same scale, with reference to the amount of his salary and period of service, as is in force by virtue of 4 & 5 W. 4, c. 24, with respect to officers and clerks who entered the public service subsequent to the fourth day of August in the year one thousand eight hundred and twenty-nine; and every such annuity shall begin from the day on which the judge shall resign his office, and shall be continued during his natural life, and shall be paid by four equal quarterly payments on the same days and in like manner as the salary of the judge of the county court is hereinbefore appointed to be paid: Provided always, That the number of persons receiving such annuity at the same time in the same county, shall not exceed the whole number of judges of the county court to be at that time appointed in that county.

15.—Chairman of the *Salford* Quarter Sessions continued under 45 Geo. 3, c. 51 (local).

16. *Districts.*—That commissions shall be issued under the Great Seal, severally directed to such Justices of each county as shall be therefore recommended by the justices of that county in quarter session assembled and approved by her Majesty, to inquire and view the said county, and thereupon to divide it into so many districts as they shall think convenient, and to appoint some principal town or place to be the district town in each district for holding Courts therein, under the authority of this act.

17. That the commissioners shall particularly describe the boundary and contents of every such district, and shall enumerate

the hundreds, wapentakes, lathes, rapes, wards and divisions, or the several parts thereof respectively, which they shall think fit to be included in, and to form part of each district, and shall give a name to each district, and shall, as soon as conveniently may be, return and certify the districts so divided with the commission into the High Court of Chancery.

18. That no part of any such district shall be distant more than ten miles in a straight line from the district court, excepting always such places which, by reason of being on or near the border of the county, or distant more than ten miles from any town in which a court can conveniently be holden, or for any other reasonable cause cannot be conveniently brought within the limits of this enactment; and all such places shall be specially returned by the commissioners, who shall also certify the distance of all the principal towns and villages in every district from the district court.

19. Divisions, as approved by her Majesty in council, to be published in the Gazette.

20. *District Courts.*—That as soon as the division of the county into districts shall be completed, the clerk of the peace shall give notice thereof in some public newspaper circulating within the county, and the justices assembled at the then next general or quarter session, or the then next adjournment thereof, shall take such measures as shall appear to them to be requisite and proper for providing district courts and other buildings for the purpose of holding courts in each district, and for the confinement of prisoners, during the sitting of the court, who shall be brought thither for trial.

21. District courts to be considered as county buildings, under 7 Geo. 4, c. 63, and 7 W. 4, and 1 Vict. c. 24.

22. Further provision for repairing and improving district courts.

23. That the session of the peace to be holden in any such county next after such publication in the Gazette, whether the same be a general quarter session, or holden under the authority of this act, as hereinbefore provided, and thence continually afterwards, shall be successively adjourned to every district in which the district court shall be then completed and fit for use, in such order as the justices shall see fit to appoint.

24. *Expenses* of circuit to be defrayed out of the county rate.

25. Justices to regulate the attendance of *high constables* and others, according to 9 G. 4, c. 43; 10 Geo. 4, c. 46; 6 & 7 W. 4, c. 12.

26. Amendment of *jury warrants* to high constables, under 6 Geo. 4, c. 50.

27. Amendment of the precepts and returns of jurors.

28. Juror's book to be made out for each district.

29. Jurors to be summoned from the district where the jury is summoned.

30. Juries, in other respects, to be summoned as heretofore.

31. *Cities and Boroughs.*—That the justices of any county may agree with the mayor, alder-

men and burgesses, by their council, of any city, town or borough, to which a separate court of quarter sessions hath been granted before the passing of this act, for joining such city, town or borough, or any part thereof, with any one of the said districts; and in such case one court only shall be holden for the united district of such city, town or borough, and the district of the county with which it shall be so joined; and the recorder of that city, town or borough shall be the judge of the county court for that united district, and shall hold the courts provided by this act for the united district in that city, town or borough, in like manner as other county courts are to be holden: Provided always, that it shall be lawful for the said justices, and for the said mayor, aldermen and burgesses, by their council, to agree to recommend to her Majesty, if they shall think fit, that one or more other judges of the county court be appointed for that united district; and in such case another judge or other judges of the county court shall be appointed for that united district.

32. *Recorders.*—That the salary which any recorder shall be entitled to receive as judge of the county court in any such united district shall be taken to be instead of his salary as recorder, and the salary of the judge or judges of the county court of such united district, and all other expenses of holding the said courts in the united district, shall be defrayed partly by the said county, out of the county rate, and partly by the said mayor, aldermen and burgesses out of the borough rate, in such proportions as shall be agreed between the said justices and the said mayor, aldermen and burgesses, by their council; and such proportion may be altered from time to time, with the consent of both parties.

33. That in case any city, town or borough, to which a separate court of quarter sessions of the peace was granted before the passing of this act shall be joined with any district of any county as hereinbefore provided, the clerk of the peace of that county shall send a copy of the list of jurors which he shall receive from the united district to the clerk of the peace for that city, town or borough, and the jurors named in the lists of such united district shall be taken to be within the provisions of the said act for regulating corporations with regard to persons qualified and liable to serve upon juries within that city, town or borough.

[The remainder of the Bill, which relates to the Civil Jurisdiction, will be given in the next Number.]

THE PROPERTY LAWYER.

FIXTURES.

We have repeatedly considered the law relating to fixtures: (See 9 L. O. 8; 11 L. O. 169; and 210.) We have now to add the following case, which decides that a lessee cannot, even during his term, maintain trover for fixtures attached to the freehold.

The action was brought by the plaintiff, an inn-keeper at Liverpool, to recover from the defendant, his assignees under a fiat in bankruptcy, which he alleged to be void, the value of certain tenant's fixtures and household furniture, which they, as his assignees, had put up to sale by auction, together with the lease of his house, and the good-will of his business. The fixtures and furniture were sold in one lot for 791. 8s. 8d.; and it was proved that the former still remained affixed to the freehold, not having been removed by the purchaser. It was contended for the defendant that the fixtures were not recoverable in trover.

Parke, B., said "*Minshull v. Lloyd*, 2 Mee. & Wels. 450, is a direct authority on this point. I gave my opinion in that case, not on my mere impression at that time, but after much consideration of this point—that the principle of law is, that whatsoever is planted in the soil, belongs to the soil—*quicquid plantatur solo, solo cedit*—that the tenant has the right to remove fixtures of this nature during his term, or during what may for this purpose be considered an excrescence on the term; but that they are not goods and chattels at all; but parcel of the freehold, and as such not recoverable in trover. The case is a direct authority, so far as my opinion and that of my brother Alderson go, and I think it was a correct decision." *Bolland and Gurney*, BB.; *concur*. *Mackintosh v. Trotter*, 3 Mee. & Wels. 184.

ON EVIDENCE IN BANKRUPTCY.

In concluding a recent article on this subject,* we quoted the 10th section of the 49 G. 3, c. 121, for the purpose of shewing that in actions or suits by or against assignees of a bankrupt, proof of the petitioning creditor's debt, trading, and act of bankruptcy, was rendered unnecessary, unless notice in writing of an intention to dispute such matters, was given within the time required by the act. The only addition made to the above section by the 6th Geo. 4, c. 18, is, that proof of these matters is in like manner dispensed with "in any action against any commissioner or person acting under the warrant of the commissioner for any thing done as such commissioner, or under such warrant;" so that whatever decisions took place upon the construction of the section quoted by us from the 49 G. 3, may be deemed strictly

* See p. 457, ante.

applicable to existing circumstances. From a cursory perusal of this section, the words would appear so plain and comprehensive as scarcely to admit of question; and yet within a short time after the act of 19th G. 3. was passed, two important distinctions were established by the late Lord Ellenborough, as to the mode in which they were to be construed. The first was in the case of *Simmons v. Knight*, 3 Campb. 351, which was an action of trover brought by a bankrupt against his assignees, for certain deeds and property taken possession of by them under the commission, to which he had surrendered. No notice having been given that the validity of the commission would be disputed, the defendants, when the plaintiffs had made out a *prima facie* case, put in the commission for the purpose of proving the trading, petitioning creditor's debt, and act of bankruptcy. To this the plaintiff's counsel objected, insisting that these matters must be proved by strict evidence, because the defendants were not described as assignees in the pleadings, and they must have known that the object of the action was to dispute the validity of the commission. But Lord Ellenborough held that he was bound to receive the commission and proceedings under it as evidence for the purposes for which they were tendered; and after quoting the words of the act, observed that the statute was not confined to cases where the assignees are named as such upon the record, and must apply when, as in this instance, the parties know they make out their title under the commission.

The other case to which we referred is that of *Ellis v. Shirley*, 3 Campb. 424, which was an action of trespass to try the validity of a commission issued against the plaintiff on the petition of the defendant. No notice was given by the plaintiff, under the act, that he meant to dispute the validity of the commission. Proof having been given on the part of the defendant that he, as assignee ordered, the plaintiff's goods to be seized by the messenger who took possession of them, his counsel put in the commission and proceedings under it as evidence of the bankruptcy. The plaintiff's counsel then proposed to give evidence to disprove the petitioning creditor's debt, as stated in the deposition under which the plaintiff was declared bankrupt; but this was objected to on the other side, on the ground that, where no notice is given pursuant to the terms of the act, the proceedings under the commission, if sufficient on the face of them, are conclusive evidence of the trading, peti-

tioning creditor's debt, and act of bankruptcy. It was also urged on the part of the defendants that the object of the act, which was to prevent the necessity of assignees bringing evidence to prove the bankruptcy unless notice were given, would be defeated, if, in every case, the proceedings under the commission might be falsified; and that if such evidence were allowed to be given, assignees, to avoid being taken by surprise, must always come prepared with witnesses to support the commission. Lord Ellenborough, however, held that it was competent for the plaintiff to disprove the petitioning creditor's debt, and stated that he could give no more effect to the depositions before the commissioners, than to the *vide voce* testimony of witnesses adduced at the trial, — that the proceedings were *prima facie* evidence, but not conclusive; and that where an action was brought against assignees by the bankrupt, who disputed the validity of the commission, it was not very likely they should be taken by surprise.

It will be seen, when we consider the alterations made in the law with regard to evidence in bankruptcy, by the statute 6 G. 4, c. 16, which we propose to bring under review at an early opportunity, that the rule established in *Ellis v. Shirley*, is materially narrowed by the 92d section, as to any commissions issued subsequently to the passing of that act, although it is still applicable to questions arising under commissions issued prior to that date.

SELECTIONS FROM CORRESPONDENCE.

CROSSING BANKER'S CHECKS, — pp. 277, 295, and 454.

Sir,

It has not, I think, been stated what is, for the most part the motive for crossing a banker's cheque. It is adopted by the drawer for his own security, as affording a means of tracing the cheque, in the event either of the loss of it, or the payment being at a future time disputed; and there can be no doubt that the object is in some measure frustrated by the practice complained of. The practice originated, I apprehend, with merchants and brokers in the city, as a substitute for a receipt stamp. I have made it my business to make some extensive enquiries on the subject, and I believe that by the wholesale dealers receipt stamps are by common consent dispensed with; a crossed cheque is considered sufficient, and this brings me to the subject upon which I wrote to you some years ago. What is really the protection of crossing the check? The cheque itself, it is manifest, would prove nothing. In a case of dispute, the banker's

clerk must be called who paid it; he must, if he can, prove that he paid it to the banker of the party to be charged, and the latter banker must also be called to prove that the amount was received on account of the party for whom it was intended. It is very easy to see that difficulties may attend this proof; and if the cheque should change hands once or twice before presentment, and ultimately be paid through another banker than the one whose name is crossed, the proof is of course rendered still more complicated; and, after all, there is no proof of the object of the payment.

The remedy I suggested for this was, to allow all parties, whether bankers or not, to draw cheques upon one another, and to render legal a receipt endorsed in the same manner as a receipt upon a bill of exchange.

The tax on receipts is evaded to an extent that the Chancellor of the Exchequer can, I think, have no idea of. I, as a solicitor in a moderate way of business, pay about 5*l.* a year for receipt stamps, and yet the gross receipt from this branch of the revenue, amounted in 1833 to only 178,466*l.* 4*s.* 3*d.* This alone, without any personal knowledge of the fact, proves the extent to which the evasion is carried. (The duty on bills during the same year, exclusive of the composition paid by the Bank of England and the country bankers, amounted to 379,515*l.* 16*s.* 9*d.*) However, as the Chancellor of the Exchequer may consider "half a loaf better than no bread," he may be unwilling to give up this branch of the stamp duty without an equivalent. I propose, therefore, that all receipts for sums amounting to 5*l.* and upwards, and all cheques payable to bearer on demand, whether drawn upon a banker or any other person, and from whatever distance drawn, shall be liable to a duty of one penny, but that a receipt written on the back of a cheque, so stamped, shall not be liable to duty.

The bankers in general would probably at first be opposed to this, and many persons in business. The latter would, I think, upon a little reflection, be convinced that the alteration would be to their advantage, and the inconvenience to them would be nothing, as bankers would issue their cheque books as now, and would charge their customers with the stamps. With regard to receipt stamps and checks on others than bankers, no inconvenience would be felt from the amount, and that which arises now from the difference in the value of the stamps would be got rid of; and as to the bankers, although I can point out no advantage to them from the change, they would sustain no injury.

How this would affect the revenue, it is difficult for me, with my present information, to see; those who now take receipt stamps would take them still, and most of them who do not, would, or they would use the stamped cheque. The number of receipt stamps that would be used I cannot estimate at all, but I have made a rough guess of the probable number of stamped cheques. There are about sixty bankers in London, some having more accounts than others. My bankers have, I

understand, about 8000 accounts; I will take the average at 1000, and I will assume that each customer draws on an average 250 cheques in the year. I believe this may be above the average among professional and private gentleman: with men in trade it is far below it. A friend of mine, to whom I mentioned this subject some time ago, told me that he sometimes drew 50 cheques on a Saturday. Taking the average number of accounts of each London banker at 1000, the number of London bankers at sixty, the number of cheques per annum drawn by such customer 250, and the stamp at one penny, the gross revenue would amount to 62,500*l.* Take the country bankers at 1000 (I am referring to England and Wales only), the average number of accounts at 250, the cheques drawn by each customer (per ann.) at 50, and the gross revenue would amount to 52,083*l.*: these two items amount to 114,583*l.*

I am as particular, I believe, as to taking receipts, as most men; but with relations and intimate friends, I am very apt to dispense with them; and so in paying money to clients which I have received on their behalf; but in those cases I get them to draw a cheque on me, payable to bearer on demand, which I accept, payable at my bankers. I cannot help doubting whether such a check could be read in evidence, as I am not in truth a banker, but a solicitor; and it is this feeling of insecurity which has induced me to trouble you.

J. C.

SHERIFFS' FEES.—ADDENDA.

BOND IN REPLEVIN.

Instead of the allowance of the fees upon the same scale as the bail-bond, the fee of one pound one shilling only is allowed, whatever be the amount, if above 20*l.*..... 1 1 0

FEES ON WRITS OF TRIAL AND INQUISITION.

The travelling expenses of the under-sheriff from his office, and of the bailiff from his residence to the place where the trial or inquisition is held, are to be apportioned ratably to the parties, if more than one trial or inquisition be held at the same time and place.

Signed by all the Judges, and ordered to be enrolled this 18th day of January, 1838.

THO. LE BLANC, *Master.*

Where there are several defendants in a writ of *capias*, and warrants are issued thereon by the under-sheriff against more than one defendant, no more shall be charged in any case for each warrant, after the first, than two shillings and sixpence.

Signed by eight of the Judges, and ordered to be enrolled this 31st day of January, 1838.

THO. LE BLANC, *Master.*

ATTORNEYS APPLYING TO BE ADMITTED,

Trinity Term, 1838,

[Concluded from p. 474.]

Clerk's Name and Residence.

- Elgie, Frederick Thomas, Great Malvern, Worcester; and City of Worcester.
 Edginton, William, Witney, Oxford; and 31, Brewer Street.
 Eyre, Joseph John, Sheffield, York; 27, Great Ormond St.; and 26, Stamford St, Surrey.
 Freeland, Francis Edward, Chichester, Sussex.
 Field, Francis Ventris, Finchley.
 Francis, Clement, 63, Lincoln's Inn Fields; 28, Great Ormond St.; and 8, Devonshire Street, Middlesex.
 Fairclough, William Charles, Liverpool; 18, Thavies Inn, London; 9, Great Ormond St.; and 14, Millman Street.
 Fisher, Henry, 89, Chancery Lane; Liverpool, and Newport, Salop.
 Freeman, John Brooke, Great Yarmouth; and 10, Edmund's Place, Aldersgate Street; 34, Claremont Square; and 12, Charles Street, Northampton Square.
 Foster, Joseph the Younger, Pontefract.
 Foster, William John Slade, Bewdley, Baptiste Mills, Wesbury-upon-Trym; and 11, Sidmouth Street.
 Field, William, York.
 Gabriel, William Wallace, 2, Featherstone Buildings; and Ledbury, Hereford.
 Grundy, John, 5, Budge Row; and Parks Hills Cottage, Lancaster.
 Grange, Richard, 20, Edward's Terrace, Pentonville; and Oxford Street.
 Hockin, Percy, Marchmont Street, Middlesex; Dartmouth; London Street, London.
 Harris, William, Rugby, Warwick.
 Hill, Henry Stephen, Kay Hill, Warwick; and 106, Upper Stamford Street, Surrey.
 Hodgkinson, George, 91, New Bond Street; and Thorne, York.
 Harward, John, 3, Cloak Lane; Stourbridge, Worcester; and 13, New Boswell Court, Lincoln's Inn.
 Heath, Henry, Amersham, Buckingham.
 Hurst, Nicholas Edward, Nottingham.
 Hewett, John Waller, 5, Southampton Street, Bloomsbury.
 Hill, Alfred Wither, 15, Chapel Place, Bermondsey; 7, Well Yard, West Smithfield; and Worting, Southampton.
 Hilton, James, the younger, Bideford; and 6, Whitehall.
 Hicks, Charles, Bankside, Southwark; 41, Great Russell Street; and 2, Harrington St., Hampstead Road.
 Hallett, Henry Hughes, Clement's Inn.
 Jenkins, William, 7, Lower Buckingham St., Strand; and City of Bristol.
 Jones, John Griffith, Beaumaris, Anglesea; and Liverpool, Lancaster.
 Jee, Thomas, Atherstone, Warwick; 39, New Bond Street; and 2, Savoy Street, Strand.
 To whom, attested; assigned, &c.
 Matthew Elgie, City of Worcester; assigned to Thomas Elgie, Great Malvern, Worcester.
 Thomas Edginton, late of Witney, Oxford.
 Henry Broomhead, Sheffield, York.
 John Price, Chichester, Sussex.
 Charles Ventris Field, Finchley.
 Francis John Gunning, Cambridge.
 John Williams, late of Red Lion Square, now of Verulam Buildings.
 Edward Guy Deane, Liverpool.
 Robert Fisher, Newport, Salop; assigned to G. Hammerton Crump, Liverpool.
 James Cobb, Great Yarmouth.
 Henry John Coleman, Pontefract.
 Slade Baker, Bewdley.
 Henry Pearson, York.
 James Holbrook, Ledbury, Hereford.
 Thomas Grundy, Bury, Lancaster.
 James Barnaby Mills, Hatten Garden; assigned to James Goren, Southmolton Street; assigned to George Metcalf, Gray's Inn Sq.
 Wm. Lamb Hockin, Dartmouth, Devon; assigned to Tho. Burd Hockin, 20, Red Lion Sq.
 George Harris the elder, Rugby, Warwick.
 William Haines, Birmingham, Warwick.
 William Thorpe, Thorne, York.
 John Birkett, 3, Cloak Lane; assigned to Rowland Price, Stourbridge, Worcester.
 Thomas Marshall, Amersham, Buckingham.
 William Hurst, Nottingham.
 Thomas Andrews Minchin, Gosport; assigned to Charles Ewens Deacon, Southampton; assigned to John Usher, Southampton.
 John Cole, Odiham.
 Robert Hamlyn, Bideford.
 Thomas Lott, Bow Lane.
 Thomas Charles Bellingham, Battle.
 James John Leman, City of Bristol.
 Robert Grace, Liverpool. Lancaster.
 Stafford Stratton Baxter, Atherstone, Warwick.

Client's Name and Residence

- Jackson, Robert, Bultwell Le-Moor, 2 Knocktorum; and 47, Answell Street, Fardonville.
 James, Charles Herbert, Merthyr Tydfil; and 25, Arundel Street, Strand.
 Kelsey, Edward Edmnd, Peach, Hardham, near Salisbury, Wilts; and 29, Arundel St. Strand.
 Lighton, Andrew, 24, New Millman Street; Exeter; and now of Starcross, Devon.
 Lewis, Charles Vallancey, 77, Great Surrey Street, Blackfriars Road, Surrey.
 Lloyd, Edward, Abergavenny, Monmouth; Great Castle Street, Regent Street; and 10, Great Coram Street, Russell Square.
 Lowry, Joseph Stampet, 3, George's Terrace, Surrey; and Crosby-upon-Eden, Cumberland.
 Lewis, John, Wrexham; and 4, Gower Street North.
 Little, Henry William, Stockport, and 82, Upper Seymour Street.
 Lyndon, Charles, 2, Harcourt Buildings, Inner Temple.
 Maughan, John, 57, Lamb's Conduit Street; and Pontypool, Monmouth.
 Mason, Henry Hewett, 10, Canterbury Place, Lambeth, Surrey.
 Maffin, Thomas, the younger, 7, Bloomsbury Square.
 Minshall, Nathaniel, the younger, Oswestry; and 16, Essex Street, Strand.
 Marples, George, Sheffield, 27, Great Ormond Street; and 26, Sanford Street, Surrey.
 Murray, Edward Jenner, 59, Chancery Lane.
 Marston, Thomas Craddock, Birmingham, and 50, Penton Street.
 Mellersh, John, Godalming; 13, Featherstone Buildings; and 17, Arlington Street, Camden Town.
 Markham, Henry Philip, Northampton.
 Morgan, Arthur Charles Llewellyn, Iccombe, Worcester.
 Mitchinson, John the younger, 41, Devonshire Street; and Sunbury.
 Nickinson, David, 8, Trafalgar Place East, Hackney Road.
 Norris, William, Manchester; and 19, Lower Chadwell Street.
 Oliver, Edward, Birmingham, Warwick.
 Osmond, George Philip, 29, Coleman Street; Tiverton, Devon; 11, Hand Court, Holborn, and 32, Southampton Row, Middlesex.
 Owen, Maurice Wynn, Plas Wilmot, near Oswestry, Salop.
 Otway, John, Stratford, Essex.
 Preston, John Booth, Leeds, York.
 Parsons, James, Somerton; and Yeovil; Somerset; and Wilmot Street, Brunswick Square.
 Pinkney, George Henry, East Sheen, Surrey; 25, Featherstone Buildings, Holborn.
 Pratt, David, Durham; and 36, Store Street, Bedford Square.
 Penny, John Deane, Taunton; and 60, Lower Seymour Street.
 Thomas, Arthur, assigned, &c.
 John Woodhouse, Bolton, Lancashire.
 William Perkins, Merthyr Tydfil.
 Matthias Thomas Hodding, Salisbury, Wilts.
 John Gidley, City of Exeter.
 James Graham Lewis, 10, Ely Place, Holborn.
 Thomas Davis, Abergavenny, Monmouth; assigned to Ralph Hansby, Abergavenny, Monmouth.
 Henry Jackson, Kirkby Stephen, Westmorland; assigned to William Carrick, Bampton, Cumberland.
 John Foulkes, Wrexham.
 Roger Bowson Lingard, Heaton Norris.
 Cobbett Derby, 2, Harcourt Buildings.
 William Edwards, then of Southam, but now of Leamington Priors, Warwick; assigned to Samuel Walker, 29, Lincoln's Inn Fields; assigned to Wm. Foster Geach, Pontypool.
 Thomas Henry Blackwell Mason, Doncaster, York.
 George Parsons Hester, Oxford.
 Thomas Minshall, Oswestry.
 William Tattershall, Sheffield; assigned to Francis Hoole, Sheffield.
 James Archibald Murray, Chancery Lane; assigned to Charles Murray, then of Midhurst, afterwards of Petworth.
 Thomas Lane Parker, Birmingham.
 Thomas Mellersh, Godalming; assigned to William Sowton, Chichester.
 Charles Markham, Northampton.
 Miles Brookes Tarn, Stow-on-the-Wold.
 Robert Oldershaw the younger, Lower Street, Islington.
 David Wire, St. Swithin's Lane; assigned to Robert Ellis, 2, Corbet Court, Grantham.
 John Norris, Manchester.
 Frederick Wills, Birmingham, Warwick.
 Robert Loosemoore, Tiverton, Devon; assigned to Barry Parr Squance, 29, Coleman Street.
 Thomas Longueville Longueville, Oswestry, Salop; assigned to Ewd. Williams, Oswestry.
 Henry Jessup Wright, Stratford, Essex.
 Henry Snowden, Leeds, York.
 Edwin Newman, Yeovil, Somerset; assigned to George Faulkner, Bedford Row.
 Edward Hillier, 6, Raymond Buildings, Gray's Inn.
 Thomas Griffith, Durham.
 Robert James, Glastonbury; assigned to Edward Beadon, Taunton.

Clerks' Names and Residence

Pidcock, Henry, Huntington; & 16, King's Rd.
Pinsent, Savery, 13, Everett Street, Russell
Square; Kingsleighton, Devon; and 74,
Manchester Street, Gray's Inn Road.
Phillips, Jacob, Chippensham Wilts; and 18,
Chapel Street, Pentonville.
Payne, James Edwin, Down Amphey, Walling-
ford; and Walbrook.
Russel, Joseph, Liverpool, Lancaster.
Rolleston, John Philip, Nottingham; and 2,
Featherstone Buildings.
Read, Albert, Worthing, Sussex.

Richards, George, Croydon, Surrey; Epsom:
and 5, Norfolk Street, Strand.

Radcliffe, John, Liverpool.

Robinson, William Wharton, Beverley, York;
and 14, Millman Street, Middlesex.

Reed, Henry John, Old Elver, city of Durham,
and 21, Store Street, Middlesex.

Ryland, Timothy Smith, 2, Flood Street, West-
minster; Birmingham, Warwick; and 20,
Everest Street, Middlesex.

Robins, Richard John Saltren, Liskeard, Corn-
wall.

Richardson, James William Hamilton, Leeds,
York.

Richardson, George Ryecroft, Blackheath;
Guildford, Surrey; and 6, Warwick Court,
Holborn.

Richards, Stephen, 67, Newgate Street; and
433, Salisbury Square.

Roberts, Arthur Throughton, Manchester; and
4, Mill Street, Hanover Square.

Robinson, John, Kingston-upon-Hull.

Radcliffe, John, Liverpool.

Robinson, George Thomas, 11, Gower Street,
Euston Square; Portsmouth, Hants; Grafton
Street East; Milton Street, Euston Square;
and 10, Hunter Street, Brunswick Square.

Radcliffe, Charles Henry, 13, Millman Street;
and City of New Sarum, Wilts.

Shaw, George Ledger, Dover, Kent; and 19,
Webb's County Terrace, Surrey.

Simpson, Joseph Pringle, Berwick-upon-
Tweed; and 3, Upper North Place.

Snowden, Peter Aird, 32, Bedford Row.

St. Aubyn, William St. John, 18, Wakefield
Street; and 43, Guildford Street.

Shilleto, Thomas, York; 6, Southampton
Buildings; and 9, Derby Street.

Stuart, John Arch, 26, Shoulsam Street, and
4, Queen Street, Middlesex.

Sanders, Philip, 27, Barton Street, Middlesex.
Smith, Bryan Sidney, Liverpool; 8, Everett
Street; and Hampstead, Middlesex.

Swatman, Edward the younger, Beccles, Suf-
folk; Little Fransham, Norfolk; and 33,
King Street, Surrey.

Smith, Edmund, Wavertree, near Liverpool;
9, Strahan Terrace; and Hampstead, Mid-
dlesex.

Traders Articles, assigned, &c.

Charles Margate, Huntingdon.
John Mull Torrete, City of Exeter.

Joseph Phillips, Chippensham.

George Eyre, Ewelme.

Thomas Davenport, Liverpool, Lancaster.

Henry Peroy, Nottingham.

Edward Adey Latte, late of Brighton; as-
signed to William Hugh Dennett, Worthing,
Sussex.

Patrick Druthmond, Croydon, Surrey.

Ambrose Lacey, Liverpool.

John Myers, Beverley, York.

Thomas Griffith, City of Durham.

Arthur Ryland, Birmingham; assigned to So-
lomon Bray, Birmingham; assigned to Jo-
seph Parke, 21, Great George Street, West-
minster.

Benjamin Hart Lyne, Liskeard, Cornwall.

James Richardson, Leeds, York.

John Hate Cardale, 2, Bedford Row; assigned
to John Allen Sibthorpe, Guildford, Surrey.

Henry Charles Chilton, 7, Chancery Lane.

Hugh Roberts, Mold; assigned to Oswald
Milne the younger, Manchester.
George Lawrence Shackles, Kingston-upon-
Hull.

Ambrose Lacey, Liverpool.

Charles Betterworth Hellard, Portsmouth.

Samuel Foot, city of New Sarum, Wilts.

Thomas Pain, Dover; assigned to William
Pain Beecham, Hawkhurst, Kent.

Thomas Gilchrist, Berwick-upon-Tweed.

Thomas Hodges Grove Snowden, Ramsgate,
Kent; assigned to Frederick William Vaux,
32, Bedford Row.

Fleming St. John, 11, Lancaster Place; as-
signed to William Henderson, 11, Lancaster
Place; assigned to Edward Erskine Tutlin,
4, New Bridge Street.

William Richardson, York.

Henry Bounsell, 28, Charlotte Street.

George Arden, Weymouth, Dorset.

Joshua Lacey the younger, Liverpool.

Edward Colby Sharpin, Beccles, Suffolk.

John Eden, Liverpool.

*Clark's Name and Residence.**To whom applied, assigned, &c.*

- Salwey, Herbert, 15, Warwick Court; and Ludlow, Salop.
 Stanton, Edward Dakin, Latchford, Chester; and 2, Spring Place, Middlesex.
 Smith, William, Inner Temple.
 Soames, Daniel Willshen, 25, Bedford Row.
 Simpson, Thomas, Stafford.
 Shapter, Henry Dwyer, 6, New Square, Lincoln's Inn; and 43, Southampton Buildings.
 Tyssen Henry, 24, Stockbridge Terrace, Middlesex; Huntingdon; and 54, High Holborn.
 Tapley, Lewis, Great Torrington, Devon; 8, Windsor Terrace, Middlesex; and 29, Great Coleman Street.
 Townson, Richard, 3, Wellclose Square, Middlesex.
 Tidswell, Benjamin Kay, Manchester; and 1, Calthorp, Street, Middlesex.
 Thomas, William Henry, 2, New Boswell Ct.; and Aberystwith, Cardigan.
 Thomas, John Harrison, York.
 Thompson, James, the younger, 18, Eaton St., Piccadilly.
 Taylor, Frederick Charles, 23, Crutched Friars.
 Ticehurst, Rowland James, Battle, Sussex; and 24, Great Queen Street.
 Trenfield John, Winchcombe.
 Veasey, Thomas, 5, New Milman Street; and Baldock.
 Wightman, Benjamin, Belfield House, near Sheffield, York; and 34, Claremont Square.
 Whittuck, Edward Decimus, Hanham Hall, Gloucester; and 25, Leigh Street, Middlesex.
 Winter, Henry, 10, Fitzroy Square, Middlesex.
 Woods, Richard, Liverpool; Stamford St., Surrey; Thanet Place; and Manchester.
 Watson, Henry, 34, Claremont Square, Middlesex.
 Willis, John Jaques, Knaresborough, York.
 Walford, Frederick, 26, Woburn Place, London.
 Woodhead, William Wright, Rotherham, York.
 Wanklyn, William, Monmouth.
 Willan, Robert, 135, Sloan Street, Chelsea; 31, Red Lion Square; and 17, Mount Street, Grosvenor Square.
 Willoughby, James Lees, Manchester; 8, Bennett's Street, Stamford Street; and 27, Beaumont Square.
 Woodhouse, George Doveton, 12, Sidmouth Street, Regent's Square.
 Wood, Christopher the younger, Wolverhampton.
- Humphry Salwey, Ludlow, Salop.
 John Fitchett, Warrington, Lancaster.
 Archibald Cameron, Worcester.
 Henry Norton, Uxbridge.
 David Thomas, Stafford.
 Robert Tucker, Ashburton, Devon; assigned to Henry Brand, city of Exeter; assigned to John Deverell, 4, Raymond Buildings.
 Henry Sweeting, Huntingdon.
 Montague Edward Smith, late of Great Torrington; assigned to William Evan Price, Great Torrington.
 John Michael Morris, 7, Bank Chambers.
 Robert Henry Wilson, Manchester.
 Horatio Hughes, Aberystwith.
 James Richardson the younger, York.
 John Buck Lloyd, Liverpool; assigned to Wm. Gilbertson, 12, Cook's Court.
 William Rackham, Norwich.
 James Martin, Battle.
 Dennis Trenfield, Winchcombe.
 Samuel Veasey, Baldock.
 Thomas Branson, Sheffield, York.
 Benjamin Gustavus Burroughs, Bristol.
 John Winter the younger, 2, Great Winchester Street.
 James Birkett, Liverpool.
 George Watson, Sheffield, York; assigned to William Fisher, Chancery Lane.
 Samuel Powell the younger, Knaresborough, York.
 Richard Lonsdale, Temple Chambers.
 Thomas Badger, Rotherham, York.
 Charles Tyler, Monmouth.
 William Newman, Darfield; assigned to Leonard Willan, Lancaster.
 Thomas Higson, Manchester.
 Francis Blake, 6, King's Road.
 G. Holyoake, and G. Robinson, Wolverhampton.
 Samuel Woodcock, the elder, Bury.
 John Bayly, Devizes.
 Robert Clitherow, the elder, Horncastle, Lincoln.

Notices put through the Door of the Master's Office during the Holidays.

- Baron, Samuel Braddock, Bury, Lancaster, and 3, Mecklenburgh Terrace.
 Bayly, John Raikes, Devizes, Wilts.
 Clitherow, Robert, the younger, 25, Villiers Street, and 2, King's Terrace.

Ordered by the Court to be admitted on the last Day of Easter Term.

- Willcox, Michael Ayres, Honiton, and Gloucester Street.
 Robert Henry Aberdein, Honiton.

SUPERIOR COURTS.

Queen's Bench Practice Court.

SERVICE OF PROCEEDINGS.—AFFIDAVIT.

Where a defendant seeks to set aside a notice of declaration, on the ground of his not having been served with process, he must swear that the process had never come to his knowledge, and an affidavit alleging only that he was never served, although there should be other affidavits showing that the service was on another person, is insufficient.

James moved for a rule nisi for setting aside the notice of declaration served in this cause, on the ground that the defendant had not been served with process. The affidavit, on which he moved, alleged simply that the defendant had not been served; but it did not state that the process had not come to the defendant's knowledge. It was submitted, however, that as there were other affidavits, by which it appeared that the service had been on another person, the Court would grant the rule, and would leave it to the plaintiff to shew in what way the service had really been effected.

Patteson, J.—The defendant's affidavit is insufficient. He ought to swear that the process had not come to his knowledge.

Rule refused.—*Giles v. Hemming*, H. T. 1838. Q. B. P. C.

EJECTMENT.—SERVICE.—ACKNOWLEDGMENT.

An acknowledgment of a service in ejectment is sufficiently shewn by a letter of the tenant's attorney before the term, threatening a bill in equity in respect of the premises sought to be recovered, the service having been on the daughter.

Butt moved for leave to sign judgment against the casual ejector. The service was peculiar. A service in the usual form had been effected on the daughter of the tenant in possession, a few days before the term. Two days before the term, a letter had been received from the attorney of the tenant, stating that he must file a bill in equity in respect of the proceedings as to the premises in question. This, it was submitted, was a sufficient acknowledgment of the service of the declaration in due time, and therefore, that judgment might be signed against the casual ejector.

Williams, J.—I think that is a sufficient service, taking all the circumstances into consideration.

Rule granted.—*Doe v. Roe*, E. T. 1838. Q. B. P. C.

EJECTMENT.—ATTORNEY.—WAIVER.

If, in a declaration in ejectment, no attorney's name is mentioned, no advantage can be taken of it.

Gunning applied to set aside a declaration in ejectment, on the ground of no attorney's name being introduced into it.

Patteson, J., (after consulting Mr. Hill, the clerk of the rules,) was of opinion, that the objection sought to be taken was not available. If the tenant, on whom application was made, had not appeared, he could not take advantage of it. If, on the other hand, he had appeared, the objection was waived. The present rule must be refused.

Rule refused.—*Doe d. Simpson v. Roe*, E. T. 1838. Q. B. P. C.

Exchequer of Pleas.

WRIT OF TRIAL.—POSTPONEMENT.—INFERIOR COURT.

The Judge of an Inferior Court of Record, to whom a writ is directed, has power to put off the trial of the cause which the writ directs him to try.

Locke applied for the directions of the Court in a cause at that time pending in the Palace Court, to the judge of which a writ of trial had been directed for the trial of the cause in question. An application had been made to the Judge of the Court to put off the cause, on certain grounds set forth in the affidavit. The learned Judge, before whom the cause came on for trial, felt some doubt whether, from the language of the act of parliament, and a *quære* put by the reporter in the marginal note to the case of *Packham v. Newman*, 3 Dowling's Prac. Cas. 165, he had power to postpone a cause which the writ of trial required him to try.

Lord Abinger, C. B.—I see no objection to the Judge of the Court postponing the cause, as he has power to try it. The Judge may, if he think it right, in his discretion postpone the cause in the same manner as any other Judge.

Alderson, B.—There can be no doubt he has a right to put off the cause. It is incidental to the authority of trying it. Suppose the writ were directed to the Sheriff of Cornwall or Devonshire, it would be rather extraordinary, when the cause came for trial, that the Judge appointed to try the cause should not have power to defer it, under whatever circumstances the cause might be situated.

Gurney, B., concurred.

Leave accordingly.—*Crooks v. Sidebottom*, E. T. 1838. Excheq.

BAIL.—CHANGING ATTORNEY.—PRISONER.

Where a defendant has appeared by one attorney, and he has gone into custody, he may put in bail by another attorney without obtaining an order for changing his attorney.

Although there may have been one successful opposition of bail, and a second notice of bail served, only one sum of 5l. need be deposited with the Master previous to justification.

Munsel opposed bail on the ground of two

notice having been given, one sum only in opposition to the bail put in.

Ball said his client would deposit 5*l*. pursuant to the practice of the Court.

Mansel submitted, that the fact of one of the sets of bail having been rejected after a successful opposition, rendered it proper that two sums of 5*l*. should be deposited in the hands of the Master.

Parks, B. (after consulting the Master).—The usual course is only to deposit one sum of 5*l*.

Mansel then opposed the bail on the ground of their having been put in by a different attorney from the one whose name appeared on the record, although no order for changing the attorney had been made. This, he submitted, was an irregularity which would prevent the bail from justifying.

Ball, in support of the bail, submitted, that the defendant in the present case being a prisoner, the rule with respect to the necessity of an order for changing the attorney did not apply. It might have been different, if the plaintiff had been at large. The present bail ought, therefore, to be allowed to justify.

Parks, B.—The rule to which reference is now made as to changing attorney, by order of a Judge, does not apply to the case of a prisoner. The bail may justify.

Bail justified.—*Jackson v. Cawley*, E. T. 1838. Excheq.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED,
April, 1838.

Watt, James, Palace Street, Dublin.
Capes, Frederick, Doctors' Commons.
Brenridge, James, Tonbridge Wells, Kent.
Vulston, Charles Howell, Sackville Street, Piccadilly.
Fearnhead, Peter, Ashby-de-la-Zouch.
Forbes, David Erskine, Warrford Court.
Baker, Robert Boak, Crosby Square.
Gale, William Burch, New Boswell Court.
Still, Robert, Lincoln's Inn.

LIST OF NEW PUBLICATIONS.

Leigh's Nisi Prius. 2 Vols. 8vo. Price 2*l*. 8*s*.
Johnson on Bills. 12mo. Price 7*s*.
Dickenson's Chancery Practice. 12mo. Price 4*s*.
Toller's Executors. 8vo. Price 16*s*.
Stock on Lunacy. 8vo. Price 12*s*.
Chitty's General Practice. Vol. 4, Part 1. Price 2*l*.*s*.

MASTERS EXTRAORDINARY IN CHANCERY.

From 27th March to 20th April, 1838, both inclusive, with dates when gazetted.

Lyons, George, Stowmarket, Suffolk. March 27.
Phillips, Joseph, Chippenham, Wilts. March 20.
Pattison, Samuel Rowles, Lancaster. April 13.
Christian Henry, Liverpool. April 17.
Taylor, Thomas, Manchester. April 17.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 27th March to 20th April, 1838, both inclusive, with dates when gazetted.

Walker, Henry Bushell, and Samuel Solomon, Liverpool, Attorneys and Solicitors. April 6.
Tremder, Nicholas Tolmie, and Robert White, Falmouth, Cornwall, Attorneys, Solicitors, and Notaries Public. April 10.

BANKRUPTCIES SUPERSEDED.

From 27th March to 20th April, 1838, both inclusive, with dates when gazetted.

Dening, William, Ottery Saint Mary, Devon, Butcher and Farmer. March 30.
Mince, George, London Road, Saint George's Fields, Surrey, Tea Dealer and Grocer. April 3.
Neville, George, East Berghott, Suffolk, Blacksmith. April 10.
Miles, Richard Judd, Warrington, Warwick, Corn Dealer and Maltster. April 13.
Brunt, James, Flash-bottom, Altonfield, Stafford, Silk Merchant. April 20.

BANKRUPTS.

From 27th March to 20th April, 1838, both inclusive, with dates when gazetted.

Ashton, Thomas, Stockport, Chester, Cotton Spinner. Coppock; Cleveland Row, Saint James's; Coppock & Co., Stockport. April 13.
Andrews, George, Sturminster Marshall, Dorset, Woolstapler. Arnold, Poole; or H. Giller, Essex Street, Strand. April 20.
Bell, James, Cockermouth, Cumberland, Hat Manufacturer. Armstrong, Staple Inn, London, Cockermouth. March 27.
Booty, William, Mundford, Norfolk, Seedsman. Clarke & Co., Lincoln's Inn Fields; Beckwith & Co., Norwich. March 27.
Brown, Andrew, Quadrant, Regent Street, Lactan and Hosier. Lachington, Off. Ass.; Patten & Co., New Boswell Court. April 3.
Bishop, Robert, Greenwich, Kent, Grocer and Chessemonger. Clark, Off. Ass.; Sandam & Co., Dunster Court, Mincing Lane. April 3.
Baldwin, John Barton, Whitkirk, York, Merchant. Wiglesworth & Co., Gray's Inn; Upton & Co., Leeds. April 3.
Bell, Edward Russel, Roebuck Brewery, Hoxton, Old Town, Middlesex, and of Wellington Street, Southwark, Surrey, Common Brewer. Glendon, Off. Ass.; Ambry & Co., Throgmorton Street. April 6.

- Brown, Robert, Maidstone, Kent, Iron Founder and Civil Engineer. *Alger, Off. Ass.*; Gould, Pioneer's Hall, Great Winchester Street, April 6.
- Barnett, John, Birmingham, Builder. *Chaplin, Gray's Inn Square*; *Richards & Co., Birmingham*. April 10.
- Bradley, John Rose, Sheffield, York, Horn, Bone and Hoof Merchant. *Wills, Southampton Street, Bloomsbury Square*; *Wilson & Co., Sheffield*. April 10.
- Bailey, Charles, and Wm. Horatio Potter, Garlick Hill, London, Wholesale Druggists and Manufacturing Chemists. *Edwards, Off. Ass.*; *Crocker & Co., Mansion House Place*. April 13.
- Barnett, John, jun., Birmingham, Builder. *Chaplin, Gray's Inn Square*; *Stubbs & Co.*; or *Barlow, Birmingham*. April 13.
- Bratt, James, West Bromwich, Stafford, Draper. *Chaplin, Gray's Inn Square*; *Harrison, Birmingham*. April 13.
- Clark, Richard, Bognor, Sussex, Hotel Keeper. *Wright, Off. Ass.*; *Lock, Surrey Street, Strand*. March 30.
- Carter, George, Leamington Priors, Warwick, Auctioneer, Furniture Broker and Factor. *Griffin, Leamington Priors*; *Baxter, Lincoln's Inn Fields*. April 6.
- Dickens, Ellisha, Bagsworth, Derby, Cotton Spinner. *Scott, Lincoln's Inn Fields*; *Norris, Manchester*. March 27.
- Dawson, George, Worksop, Nottingham, Innkeeper; *Hannan & Co., Worksop*; Messrs. *Hutchinson, Chesterfield*; or *Smithson & Co., Southampton Buildings, Chancery Lane*.— April 6.
- Davison, Cuthbert, Sunderland; Durham, Cabinet Maker and Upholsterer. *Hopwood & Co., Chancery Lane*; *Watless, Sunderland*. April 13.
- Dorrell, Wm., Colchester, Essex, Innkeeper and Victualler. *Sparling, Colchester*; *Woods & Co., Cornhill Place, Gracechurch Street*. April 17.
- Eatough, Thomas, Blackburn, Lancaster, Provision Dealer and Tallow Chandler. *Makinson & Co., Temple*; *Makinson, Blackburn*. April 3.
- Ewington, Wm., Leamington Priors, Scrivener. *Rushworth, Staple Inn*. April 17.
- Evans, George, Southampton, Trunk Maker.— Messrs. *Parr, Poole*; *Holme & Co., New Inn*. April 20.
- Evans, George, Caernarvon, Innkeeper. *Behshaw, Drury Lane*; *Adlington & Co., Bedford Row*, March 27.
- Evans, Charles John, Woolhampton, Berks, Innkeeper. *Clark, Reading*; *Holmes, Great James's Street, Bedford Row*. April 10.
- Frost, John, Grafton Street, Soho, Goldsmith and Jeweller. *Green, Off. Ass.*; *Robinson & Co., Charter-house, Square*. April 13.
- Garside, Mary, Dukensfield, Chester, Pot Manufacturer. *Slater & Co., Manchester*; *Mitne & Co., Temple*. April 17.
- Harries, John, Carmarthen, Timber and Wine Merchant. *Morris & Co., Carmarthen*; *Chilton, Chancery Lane*. March 27.
- Hill, Benjamin, Birmingham, Stationer. *Chaplin, Gray's Inn Square*; *Harrison, Birmingham*. March 27.
- Hogarth, David, sen., Great Yarmouth, Norfolk, Coach Proprietor. *Sayers, Great Yarmouth*; *Swain & Co., Frederick's Place, Old Jewry*. March 27.
- Hood, Thomas, Birmingham, Carrier and Leather Seller. *Chaplin, Gray's Inn Square*; *Ingleby & Co., Birmingham*. March 30.
- Henderson, John, High Crosby, Cumberland, Horse Dealer. *Copes & Co., Bedford Row*; Messrs. *Saul, Carlisle*. March 30.
- Hornsheld, William Henry, Preston, Lancaster, Draper. *Parker, Saint Paul's Church Yard*. April 3.
- Hounsfield, William Henry, Preston, Lancaster, Draper. *Parker, Saint Paul's Church Yard*. April 10.
- Hugo, Samuel, Truro, Cornwall, Master. *Borlase, Truro*; *Falcon, Eijn Court, Temple*. April 17.
- Irish, Robert Stracey, Worcester, Wine Merchant. *Jingwall, New Bank Buildings*. April 13.
- Johnson, Thomas, Knareborough, York, Draper. *Johnson & Co., Temple*; Messrs. *Wood, Manchester*. April 3.
- Lawrence, Friend, of New Cut, and Lower Marsh, Lambeth, Surrey, General Dealer. *Abbott, Off. Ass.*; *Spyer, Broad Street Buildings*. March 30.
- Lorden, John, and Nathaniel Hadley, Herne Bay, Kent, Builders, Bricklayers, and Carpenters. *Kaye, Symond's Inn, Chancery Lane*. March 30.
- Munro, George, Great Mitchell Street, Saint Luke's, Ironfounder. *Johnson, Off. Ass.*; *Letts, Bartlett's Buildings, Holborn*. March 27.
- Morrison, Angus, Watford, Hertford, Grocer and Cheesemonger. *Alger, Off. Ass.*; *Dods, Northumberland Street, Strand*. March 30.
- Mornement, Robert Mack, Burnham Westgate, Norfolk, Grocer and Draper. *Wood & Co., Falcon Street, Aldersgate Street*; *Gridley, Burnham Westgate*. March 30.
- May, John, Newport, Isle of Wight, Southampton, Mercer and Draper. *Hearn, Newport*; *Foeters & Co., Raymond Buildings, Gray's Inn*. March 30.
- Martin, Richard, Oxford Street, Linen Draper and Hosier. *Goldsmid, Off. Ass.*; *Sharp, Devonshire Terrace, Marylebone*. April 6.
- Moss, William, Monk Sherborne, otherwise West Sherborne, Southampton, Builder. *Cole & Co., Basingstoke and Odham*. *Johnson & Co., Temple*. April 17.
- Magee, Patrick, Liverpool, Marine Store Dealer. *Littledale & Co., Liverpool*. *Blackstock & Co., Temple*. April 17.
- Nickols, Samuel, and Charles Bateson, Leeds, York, Carpet Dealers. *Dangerfield, Lincoln's Inn Fields*; *Brinton, Kidderminster*; *Dunning & Co., Leeds*. April 17.
- Pritchard, Richard, Hereford, Brickmaker, Mason and Builder. *King & Co., Sergeant's Inn, Fleet Street*; Messrs. *Edwards, Ross, Hereford*. March 27.
- Philpott, John, Rochester, Kent, Ironmonger. *Belcher, Off. Ass.*; *Williams, Alfred Place, Bedford Square*. April 3.
- Peace, William, Leamington Priors, Warwick, Builder. *Newton & Co., South Square, Gray's Inn*; *Heath, Warwick*. April 13.
- Procter, Robert, Nettleham, Lincoln, Farmer. *Wing, Gray's Inn*; *Cooke, Lincoln*. April 20.
- Pilling, Job, Habergham Eaves, near Burnley, Lancaster, Millwright, and Iron and Brass Founder. *Alcock & Co., Burnley*; *Douglass & Co., Gray's Inn*. April 20.
- Robson, Thomas, East Cheap, London, Operative Chemist. *Pennell, Off. Ass.*; *Crosby, Church Court, Old Jewry*. March 30.

Rowe, Charles Henry, Cheltenham, Gloucester, Woollen Draper. *Pope*, Gray's Inn Square; *Bishop*, Dursley. *March 30*.

Routledge, Wm., Oakshaw, Bewcastle, Cumberland, Cattle Dealer. *Capes & Co.*, Bedford Row; *Messrs. Saul*, Carlisle. *March 30*.

Royle, Thomas, Manchester, Muslin Manufacturer and Malster. *Addington & Co.*, Bedford Row; *Hampson*, Manchester.

Rutherford, Jesse, Wingerworth, Derby, Stone Quarrier. *Spence*, Alfred Place, Bedford Square; *Lucas & Co.*, Chesterfield. *April 10*.

Reed, Richard, Dawlish, Devon, Miller and Baker. *Clowes & Co.*, Temple; *Leidman*, Exeter. *April 10*.

Slingsby, John, Moston, near Manchester, Cattle Dealer. *Hall & Co.*, Verulam Buildings, Gray's Inn; *Aspinall*, Manchester. *March 27*.

Smillie, Robert, Kingston upon Hull, Tea Dealer. *Salé*, Manchester; *England & Co.*, Hull; *Messrs. Baxter*, Lincoln's Inn Fields. *March 27*.

Stead, Jonas, Armley, Leeds, York, Woollen Cloth Manufacturer. *Makinson & Co.*, Temple; *Dunning & Co.*, or *Foden*, Leeds. *March 30*.

Scott, Adam, Stourbridge, Worcester, Builder. *Clowes & Co.*, King's Bench Walk; *Collins*, Stourbridge. *March 30*.

Strong, Frederick, and William Barthold, Great Tower Street, Merchants. *Johnson*, Off. Ass.; *Druce & Co.*, Billiter Square. *April 6*.

Searle, Wm., and Wm. Wells Searle, Alford, Lincoln, Grocers and Druggists. *Armstrong*, Staple Inn; *Wilson & Co.*, Alford. *April 6*.

Stephenson, William, Stokesley, York, Linen Manufacturer and Grocer. *Garbutt & Co.*, Yarm; *Blacket*, Tokenhouse Yard, Lothbury. *April 10*.

Thomas, Marmaduke, Lawrence Lane, Cheapside, Warehouseman. *Goldamid*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. *March 27*.

Turner, Robert, Sheffield, York, Joiner & Builder. *Preston*, Tokenhouse Yard; *Sorby & Co.*, Sheffield. *April 17*.

Tooly, William, St. James's Buildings, Clerkenwell, Carpenter. *Johnson*, Off. Ass.; *Robinson & Co.*, Charter-house Square. *April 20*.

Webb, Richard Francis, Welclose Square, Ship Chandler. *Groom*, Off. Ass.; *Swan & Co.*, Little James Street, Bedford Row. *March 30*.

Walker, William, Kingston-upon-Hull, Warehouseman and Wharfinger. *England & Co.*, Hull; *Rosser & Co.*, Gray's Inn Place. *March 30*.

Winder, John, Little Mays Buildings, Bedfordbury, Tobacconist. *Whitmore*, Off. Ass.; *Stafford*, Buckingham Street, Strand. *April 3*.

Woodhouse, John, Wolverhampton, Stafford, Victualler. *Alger*, Bedford Row; *Rogers*, Stourbridge. *April 3*.

Ward, David, Manchester, Iron Merchant. *Johnson & Co.*, Temple; *Kershaw*, Manchester. *April 10*.

Watts, George, Nottingham, Lace Dealer. *Jones & Co.*, John Street, Bedford Row; *Browne*, Nottingham. *April 10*.

Wilcock, Jairus James, Hovingham, York, Surgeon and Apothecary. *Smithson & Co.*, Southampton Buildings, Chancery Lane. *April 17*.

Watson, Edward, Nettleham, Lincoln, Saddler, Collar and Harness Maker. *Scott*, Lincoln's Inn Fields; *Plaskitt*, Gainsborough.

Young, John, Brighton, Silk Mercer and Linen Draper. *Messrs. Cooper*, Brighton; *Hare*, Serle Street, Lincoln's Inn Fields. *April 10*.

PRICES OF STOCKS, *Tuesday, April 24, 1838.*

Bank Stock div. 8 per Cent.	-	205 $\frac{1}{2}$ a 6 a 5 $\frac{1}{2}$ a 6
3 per Cent. Reduced	- - - -	92 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$
3 per Cent. Consols. Anns.	- - - -	93 $\frac{1}{2}$ a $\frac{1}{2}$
3 $\frac{1}{2}$ per Cent. Reduced Annuities	- - - -	100 $\frac{1}{2}$ a $\frac{1}{2}$
New 3 $\frac{1}{2}$ per Cent. Annuities	- - - -	101 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$
Long Annuities	- - - -	15 $\frac{1}{2}$ a 15 a $\frac{1}{2}$
Annuities for 30 years [expire 10th October 1859]	- - - -	14 $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$ a $\frac{1}{2}$
Ditto do.	- - - -	[5th Jan. 1860] 15 $\frac{1}{2}$
India Stock, div. 10 $\frac{1}{2}$ per Cent.	- - - -	271
Ditto Bonds, 4 per Cent.	- - - -	75s. a 77s. pm.
Ditto, to be paid off 30th June	- - - -	6s. pm.
South Sea Old Annuities	- - - -	90 $\frac{1}{2}$ a $\frac{1}{2}$
3 per Cent. Consols. for Account, 29 May	- - - -	93 $\frac{1}{2}$
Exchequer Bills, £1000 at 2 $\frac{1}{2}$ d.	- - - -	67s. 69s. 67s. pm.
Ditto	- - - -	500l. at 2 $\frac{1}{2}$ d. - 69s. 67s. pm.
Ditto	- - - -	Small at 2 $\frac{1}{2}$ d. - 69s. 67s. pm.

THE EDITOR'S LETTER BOX.

Our Fifteenth Volume closes this week, with the Digested Index to the Cases reported, accompanied by a Title-Page, Contents, and Index to the general matter. We cordially thank our Subscribers for their support of the Legal Observer. After upwards of seven years' experience in the management of the Work, we feel more than ever disposed, with the help of our able and learned Contributors, to continue those exertions by which we have gained so largely the approbation of the profession.

The Letters of "Justus," E. H.; and W. A. L., will appear in an early Number.

A correspondent says we shall "confer an obligation on many articulated clerks who are candidates to be examined this present Easter Term, by stating what we think the *minimum* number of questions, *answered rightly*, that will be considered sufficient to pass a candidate; and whether, if a candidate answer eight questions in Common Law, eight in Conveyancing, eight in Equity, and five in Bankruptcy, the Examiners would give him his certificate?" In answer to the latter part of this question, we have no doubt that the candidate would certainly receive his certificate. With respect to the *minimum* of questions to be answered rightly, we cannot be positive, but incline to think that seven or eight questions, well answered, in Common Law, Equity, and one other department, will be deemed sufficient. We recommend, however, each candidate to answer all the questions in his power, and to forego the gratification of boasting that he answered sufficient in half the usual time.

The statements contained in the two letters relating to the Review of Mr. Bone's Precedents in Conveyancing in our last Number shall be investigated; and our correspondents may rely that full justice will be done in our next Number, although one of the letters is written in a manner needlessly offensive.

DIGESTED INDEX TO THE CASES REPORTED

IN

Volume XV. of The Legal Observer.

ACT OF PARLIAMENT.

Steam boats plying on the Thames are within the 7 & 8 G. 4, c. 75, (the local act regulating the Watermen's Company, and boats and vessels plying between Yantlet Creek and Windsor) and are subject to the bye laws made by the Court of Aldermen under the authority of this act. *Tisdall v. Cumber, Esq.* Page 221

AFFIDAVIT.

1. A Defendant being alleged, in an affidavit to hold to bail, to be indebted to the plaintiff in 20*l.* principal money of a bill "drawn and accepted by the defendant," it is sufficient. *Harris v. Rigby* . . . 190
2. When an affidavit must be entitled in the cause. *Doe d. Clark v. Stilwell* . . . 460
3. An affidavit of debt, alleging the defendant to be indebted in the sum of 184*l.* on a promissory note drawn for a like sum, is sufficient. 2. In the jurat the affidavit being stated to be sworn by virtue of "a commission forth from the Court of Common Pleas," the word "issued" being omitted, it is sufficient. 3. An application to discharge a prisoner out of custody, on the ground of the irregularity of the affidavit of debt, must be made within the time limited for entering an appearance. *Duley v. D'Arcey Muihon* . . . 47

AFFILIATION.

Two magistrates after hearing a charge against a man, that he was the father of a bastard child, and his defence thereto, declared him to be the putative father, and as such, ordered him to pay a certain sum of money for the past expenses of the maintenance, and a certain weekly sum for its future support. Circumstances under which a mistake in drawing up the order will not vitiate such order. *Wilkins v. Hemsworth* . . . 315

AGREEMENT.

Circumstances where under an agreement with the directors of a projected railway to withdraw the opposition to the bill, the Lord Chancellor, reversing the decision of the Master of the Rolls, allowed the demurrer, on the ground that the irregularity of the agreement, if it was illegal, appeared on the face of it, and could be tried in the action at law. *Simpson v. Lord Howden* . . . 57

ANNOYANCE JURY.

To justify a constable in levying a fine imposed by an annoyance jury on a shopkeeper for having defective scales, the constable must shew that in fact all the jury saw the scales examined. But where he justifies under a local act of parliament, and under a warrant from a proper officer appointed under the act, he need not shew that at least twelve of the jury concurred in the finding. 2. A liability to serve on the annoyance jury of the city of Westminster, will not disqualify a man

from serving on a jury in one of the Superior Courts there, in a cause where the validity of the decision of an annoyance jury of that city is the matter to be tried. *Holland v. Heath and Griffiths* . . . Page 379

APPEAL.

- If an appeal is made against a borough rate, the notice of appeal must be given to the town clerk, who, being for this purpose the servant and representative of the town council by whom the rate is made, is the proper person to receive notice of an appeal against it. *The Queen v. The Recorder of Caermarthen* . 237
- 2.—1. The accounts of an assistant overseer may be made the subject of an appeal to the Quarter Sessions. 2. An assistant overseer is not the servant of the overseer, but of the vestry, and is a person having the care of the poor. *The Queen v. George Watts* . 222
 3. A notice of appeal against an order of removal, must strictly state the grounds of appeal, or the justices at sessions may refuse to hear the appeal. *The Queen v. The Justices of Sulop* . . . 26

ARBITRATION.

1. Where arbitrators are appointed with power to choose an umpire, and they select him by lot, an award made by such umpire is bad. *Hawkins v. Dixon* . . . 284
- 2 The plaintiff cannot shew for cause against a rule for an attachment for non-performance of an award, after the order of reference and the enlargement of the time has been made a rule of Court, that there was no affidavit of the due enlargement of time, but the proper course is, to move to set aside the rule of Court. *Barton v. Rumson* . . . 461

ARREST.

1. Where a defendant has been arrested on an irregular writ, and a detainer has been lodged against him by another party, not being aware of the irregularity in the first arrest, he will not be entitled to his discharge out of custody. *Ex parte Cugg* . . . 285
2. An irregularity in the arrest of a defendant cannot be taken advantage of after judgment has been obtained and he has been charged in execution. *Cross v. Marsh* . 349

ATTORNEY.

1. Under special circumstances, the Court will permit a rule nisi calling on an attorney to pay the costs of taxing his bill, the master having taken off more than one sixth, to be served on his agent. *Burrell v. Seaton* . 28
2. An attorney may be called upon summarily to deliver up monies received by him in respect of mortgages for which he has prepared the deeds. *Ex parte Crippell* . 14
3. An attorney must be called in Court in order to make a rule absolute, requiring him

to answer certain matters contained in an affidavit. *In re Whiche* Page 28

4. In a country cause, where the defendant is an attorney, and lives in London, he has only four days time to plead. *Louder v. Louder* 28

5. An attorney will be allowed the costs of one letter only, written before the commencement of the suit, requiring the settlement of a demand. *Capel v. Staines* 30

6. An attorney cannot be considered as guilty of negligence in suffering judgment by default, if upon the whole it appears the most prudent course to pursue. *Carter v. Marriot* 110

7. Letters between a solicitor and his client, relating to the matter which is the subject of the suit, are privileged communications, and the client is not bound to produce them for the inspection of his adversary. *Harvey v. Atkinson* 236

8. In order to take advantage of a defence of the non delivery of an attorney's bill a month before action brought, it must be pleaded. 2. Where in a writ of trial the defendant is stated to have "impleaded" on a certain day, it is sufficient proof of the action having been commenced on that day. *Robinson v. Roland* 397

9. Where an attorney's name has been entered on the roll, and he afterwards assumes a new surname, the Court of Queen's Bench will allow the latter name to be added to the one already on the roll. *Ex parte Ware* 269

10. Where an attorney has taken a name in addition to the name by which he before went, the Court of Common Pleas will not order it to be placed on the roll. *Ex parte Ware* 285

11. Where the Court will make a rule absolute for striking an attorney off the roll, on the ground of his practising in prison, although no cause is shewn. *Ex parte Wright* 238

12. Where the negligence of the London agent is an excuse for not leaving the answers for the Examiners at the Law Institution in due time. *Ex parte Rutter* 233

13. Where illness is a ground for dispensing with the usual strictness in admitting attorneys since the new rules. *Ex parte Paterson* 223

14. Where a clerk has duly passed the usual examination, but has lost the papers necessary to procure his admission as an attorney, the Court will permit him to give notice on the first day of Term, of his intention to apply on the last day of Term to be admitted. *Ex parte Clarke* 93

15. Where an attorney has represented that articles of clerkship made on behalf of a young man entrusted to his care and tuition, may be stamped at any time, and has undertaken to see every thing with respect to them done speedily and properly, if he neglects to get the articles of clerkship stamped within the time required by law, this Court will grant a rule calling on him to repay the premium received, and to go before the Master, who may direct what is proper to be done between the parties *Anon.* 108

16. Articles of clerkship expiring on the 1st June, but the time of depositing them, together with the certificate of service, at the Hall of the Incorporated Law Society, pursuant to the rules of E. T. 6 W. 4, having expired on the 29th May, and the examination day being the 5th June, the Court will grant an order on the 2d June, desiring the articles to be received. *Ex parte Cooper* Page 13

17. In reckoning the three days before the commencement of the term in which the notices of persons applying to be admitted as attorneys are to be delivered pursuant to the rule 5 R. G., H. T., 6 W. 4, Sunday will reckon one day. *Ex parte* 23

18. Where the rule respecting re-admissions is not complied with, as to leaving notices before Term, the Court will allow them to be given during Term. *Ex parte Moleworth* 238

19. The Court will allow the usual affidavit, made previous to re-admission of an attorney to be filed at a day subsequent to the strict time, where the omission arises from inadvertence. *Ex parte Green* 238

20. An attorney, after practising for some years, discontinued his practice and ceased to take out a certificate. He was subsequently re-admitted, but did not then resume his practice, and did not take out his certificate. At the expiration of three years from his re-admission, without applying for a second re-admission, he took out a certificate and began practising:—Held, that by not taking out a certificate for more than a year after his re-admission, he had ceased to be upon the rolls of the Court; that he was not entitled to practise without being a second time re-admitted; and that his practice, without such second re-admission, was illegal; and the Court ordered certain judgments on securities received by him, in payment for business then done, to be set aside. *Wilton v. Chambers* 223

21. An attorney is entitled to be sued in his own Court, notwithstanding the 1 Vict. c. 56, s. 4. A plea of such privilege cannot be treated as a nullity by a plaintiff, but if the privilege should have been waived, the waiver must be replied. *Prior v. Smith* 11. 478
And see SOLICITOR.

BANKRUPT.

Plaintiffs in actions where the defendants have become bankrupts, will not be allowed to discontinue the actions and proceed under the fiat under the 15th section of the general Bankrupt Act, 6 Geo. 4, c. 16, unless they have either proved their debt under the commission, or have had their claim entered on the proceedings. *Augarde, assignee, v. Thompson* 16

SAIL.

1. Where on an application for leave to take money out of Court, which has been deposited in lieu of bail and for costs, it appears that issue may be joined before the rule can be disposed of, the Court will grant a rule with a stay of proceedings. *Shor v. Cox* 351
2. The Court will set aside proceedings on

a bail bond, and order the bond itself to be delivered up to be cancelled, where it has been taken in pursuance of a wrong indorsement on the writ, such indorsement requiring bail to be taken for a greater amount than the sum named in the writ. *Coake v. Cooper* Page 103

3. Bail cannot justify in respect of different property from that mentioned in the affidavit of justification, although it may be sufficient in amount. *Delicarte's Bail* 62

4. It is necessary in the Court of Common Pleas to state the description of the bail in the notice of justification, although the bail referred to, are not added bail, but the same as those of which notice had already been given. *Glennville's Bail* 142

5.—1. Where a defendant has appeared by one attorney, and he has gone into custody, he may put in bail by another attorney, without obtaining an order for changing his attorney. 2. Although there may have been one successful opposition of bail, and a second notice of bail served, only one sum of 5*l.* need be deposited with the Master previous to justification. *Jackson v. Cawley* 493

CLERGYMAN.

Joint stock banking companies are within the meaning of the act 57 Geo. 3, c. 39, by which spiritual persons are forbidden to trade or deal; and contracts made with a banking company, in which there are two clergymen, are therefore void. *Hull v. Franklin* 317

COGNOVIT.

1. If a plaintiff is entitled to sign judgment ~~contra cognovit~~, in default of paying one instalment, such judgment may be signed, although he is proceeding to obtain payment of a ~~liability~~ given in part payment of the instalment. *Fernando v. Wilks* 93

2. Where a defendant has given a cognovit for 5*l.* debt and costs, the original debt being under 20*l.*, he is entitled to his discharge under the 48 Geo. 3, c. 123. *Rathbone v. Fowler* 190

CONTEMPT.

1. Where a party present in Court at the time, is directed by an Ecclesiastical Court to perform a penance, and to pay costs, the refusal to do either is to be taken as evidence of his having been admonished of the sentence, and non-performance of it under such circumstances will subject him to process for contumaciousness. 2. If he is in contempt for refusal to perform one part of the sentence, which is clearly good, this Court will not inquire whether the other parts of the sentence can be supported. *Kingdon v. Haak* 235

COPYRIGHT.

1. To a bill stating a case of equitable copyright, and charging piracy thereof, and praying an injunction, a demurrer was put in for want of equity, on the ground that there was not a valid assignment of the copyright, and for want of parties, on the ground that the author was not named as a party. The demurrer for

want of parties was held good. *Colburn v. Duncanson* Page 411

2. The question as to whether there has been a representation of a part of any dramatic entertainment, within the stat. 2 & 3 W. 4, c. 15, is for the jury, and the jury having found that the singing the words of a song in an opera amounted to such a representation, the Court will not disturb the verdict. *Planché v. Braham* 125

CORPORATION.

1. Though a corporation, authorises its chamberlain to appoint an assistant chamberlain, and pays that chamberlain out of corporate funds, he is nevertheless not an officer of the corporation, but may be dismissed without being entitled to compensation under the Municipal Reform Act. *The Queen, ex parte Harvey v. The Lords of the Treasury* 396

2. The act of parliament as to the Foundling Hospital estates, does not make the site of those buildings extra parochial. 2. Circumstances in which a charitable corporation did not become liable for the maintenance of a child, but such child was entitled to relief as casual poor, being found deserted and exposed within the limits of the parish. *The Queen v. The Directors of the Poor of St. Pancras* 364

3. A corporation having transferred stock, to divest the corporation of all power, over it, between the introduction of the bill for reforming the Municipal Corporations into parliament, and the passing of it:—Held that the stock was not divested out of the corporation, that the new act impressed the corporation property with a trust, and that the appropriation of the fund to the purposes named was a breach of trust. *Attorney General v. Wilson* 218

4. If a town clerk of an old corporation has been re-appointed to his office by the new corporation, but is subsequently dismissed, though not for any thing which would warrant removal from an office held during good behaviour, he is notwithstanding such re-appointment, entitled to compensation under the 5 & 6 W. 4, c. 76, s. 66. *Ex parte Tibbette* 157

5.—1. A party who claims the benefit of the provisions of the 7 W. 4, and 1 Vict. c. 78, which, by section 1, declares all corporate elections good, notwithstanding any defect of title in the officer presiding at such election, must, under the 20th section, if proceedings had, before the passing of the act, been commenced against him, take steps to stay those proceedings, and pay costs already incurred. The two sections must be construed together, and the conditions imposed by the 20th must be complied with, in order to bring into operation the provisions of the first section. 2. It seems that if a rule is opened after being made absolute by consent, the party getting it opened is not at liberty to use affidavits sworn after the rule was made absolute. 3. And also that a party who took part in an election, without at the time making any objection that the election was informal, cannot afterwards ap-

pear as a relator to impeach it. *The Queen v. Jones* Page 138

6. Held that the act 5 & 6 W. 4, c. 76, for regulating municipal corporations, constituted the old governing bodies trustees of the real and personal estate belonging to the corporations from the passing of that act to the time of the election of the new governing bodies; and the alienation of any part of the principal of the estates in the mean time, even for the purpose of raising a fund for the endowment of the ministers of the churches within the boroughs, is inconsistent with the trust and with the provisions of the new act; and the Court of Chancery retains its ordinary jurisdiction in matters of trust to restrain such alienation. *Attorney General v. Aspinall* 42

7.—1. Where the terms of a local act leave it doubtful whether a person appointed under it can be said to be an officer of the corporation, the Court will look to the fund out of which he is to be paid, in order to assist in deciding the question. The mere form of an appointment and a dismissal will not establish that the person appointed and dismissed was an officer of a corporation, and though the Court will not construe the word "officer" with strictness, it will require other circumstances to shew that he is entitled to that character, and as such, has a right to claim compensation for the loss of his office. *The Queen, Ex parte Edwards v. The Mayor and Town Council of Poole* 459

COSTS.

1. The Court will not interpose to relieve the defendant from the payment of costs before the action is tried, where the plaintiff claims by the indorsement on the writ, a sum recoverable in the Court of Requests, but will leave the defendant to apply for leave to enter a suggestion. *King v. Myers* 14

2. A writ being duly endorsed pursuant to the 2 R. G. H. T. 2 W. 4, for a certain sum for debt and costs, and the amount being paid within the four days prescribed by the rule, with 5s. more, and on the costs being taxed, more than one sixth, including the 5s. being taken off, the case is not within the rule, and the defendant therefore is not entitled to the costs of taxation under it. *Ward v. Gregg* 20

3. A cause having been referred, without any verdict being taken, but there being an agreement that the successful party should be at liberty to enter up judgment as if there had been a verdict, and the arbitrator having awarded less than 20l.—Held, that the case came within the "directions to taxing officers," in the rule of H. T. 4 W. 4, and that the costs were to be taxed on the lower scale. *Wulken v. Smith* 158

4. Where a plaintiff indorses his writ for 18l. 19s. 6d., but declares for that amount, and in addition for a further sum of 1l. 0s. 6d., and the defendant pleads non assumpsit to the first sum, and pays the latter into court, and the plaintiff replies, accepting the money in full satisfaction, the defendant residing within

the jurisdiction of a local court for the recovery of debts under 40s., the Court will not allow the plaintiff his costs, on the ground of his having misled the defendant by the indorsement. *Thompson v. Gill* Page 285

5. Where, on an application for costs under the 43 G. 3, c. 46, s. 3, on the ground of an excessive arrest without reasonable and probable cause, it appears that the sum for which the defendant was arrested consisted of two amounts, one of which was recovered, while the other was abandoned at the trial, the defendant having pleaded to it the Statute of Limitations, and it is shewn by the plaintiff's affidavit that the defendant frequently in conversation admitted the latter sum to be due, the Court will not grant the defendant his costs. *White v. Prickett* 380

6. An affidavit, stating the belief of the deponent that the plaintiff is residing abroad, is not sufficient to entitle the defendant to a rule calling on the plaintiff to give security for costs. *Sundys v. Hohler* 366

COURT OF REQUESTS.

1. It is not competent to the Bath Court of Requests to award compensation to a person for loss of time in attending a Revising Barrister's Court; and *semble*, that if a party has not acquiesced in the jurisdiction of the inferior court, a prohibition will issue, even after sentence and execution, although the want of jurisdiction shall not appear on the proceedings. *Roberts v. Humby* 205

2. In an application to restrain the plaintiff's costs under the Blackheath Court of Requests Act, the defendant describing himself as "of the Mitre Tavern, Greenwich, in the hundred of Blackheath," and afterwards alleging that he was "wholly resident at the above tavern, before and at the time of the issuing of the writ of summons," is sufficient proof of his being resident within the jurisdiction of the hundred of Blackheath, without a substantive allegation to that effect. 2. Although the sum does not appear on the affidavit for which the action is brought, the Court will take it from the copy of the writ of summons which is annexed to them. *Burton v. Campbell* 338

3. The Court in granting a rule to set aside proceedings in an action, on the ground that the verdict being for 10s. only, the defendant was liable under the 6 & 7 W. 4, c. 137, s. 86, to be summoned to the Westminster Court of Requests, will not make the rule for paying the defendant the costs incurred by him in the cause, costs not being given by the act. *White v. Seffer* 271

4. The Westminster Court of Requests Act, 6 & 7 W. 4, c. 137, does not entitle a defendant, liable to be summoned, to apply for the costs of a rule had in a superior court. An affidavit in support of an application to deprive the plaintiff of costs, on the ground of the trial having been had in a superior court, should allege, in the words of the statute, that the defendant is "residing in or inhabiting within the jurisdiction of the Court." *White v. Seffer* 445

COVENANT.

Where a party enters into a positive covenant to do a certain thing, he cannot afterwards set up, in answer to an action for the non performance of that covenant, a difficulty interposed by the authority of a third person. 2. At all events, he must shew that such difficulty is created by a positive enactment of law; though even if he could shew that fact, *quere* whether he could thereby discharge himself from his covenant. *Tuffnell v. Constable*. Page 443

CREDITORS.

The consent of the authorised agents of the major part in value of creditors who have proved their debts under the commission, is sufficient authority for the assignee of the bankrupt to institute a suit. *Bannantye v. Leeder*. 314

DOMICILE.

A. was seised of real estate in Scotland, and possessed of personal estate in England, where she was domiciled, and died intestate and in debt. Her judgment creditors brought actions against the heirs in Scotland, and recovered. Held, that they were entitled to be reimbursed out of A.'s personal estate in England, that being, according to the law of the place of domicile, the primary fund for the payment of an intestate's debts. *Winchelsea v. Garroty*, and *Ker v. Faughan*. 457

EJECTMENT.

1. Though a declaration was entitled of a term which had not yet arrived, the Court allowed the plaintiff to have judgment against the casual ejector. *Doe v. Roe*. 28

2. The declaration in ejectment being entitled of T. T. 1 Victoria, her Majesty not having then begun to reign, but the notice being rightly dated, the Court will nevertheless grant a rule for judgment against the casual ejector. *Doe, dem. — v. Roe*. 30

3. In moving for the landlord's rule under the 1 Geo. 4, c. 87, the execution of the lease need not necessarily be sworn to by the attesting witness, if it is deposed to by another person. *Doe, dem. Cowland v. Roe*. 29

4. The Court will grant a rule nisi for judgment, where the attorney of the lessor of the plaintiff has received instructions to apply for the rule in due time, but has neglected to do so, not being aware that the rule in the C. P. as to the time of moving, differed from that of the other Courts. *Doe d. Davis v. Roe*. 239

5. Where in a country ejectment, the notice is to appear in one term, judgment may be obtained against the casual ejector in the following term, without a rule nisi. *Doe d. Croom v. Roe*. 366

6. In a declaration in ejectment, the omission of the *quo minus* is immaterial. *Doe d. Bloakham v. Roe*. 414

7. Where the tenant in possession has become a bankrupt, service of the declaration and notice on the messenger of the Court of Bankruptcy, who is in possession of the premises, and on the official assignee, is sufficient. *Doe d. Baring v. Roe*. 238

8. Service of process on the wife of the tenant in possession, at the residence of the tenant, where the premises sought to be recovered consists of stables, is sufficient. *Doe d. — v. Roe*. Page 224

9. Service on a servant of the tenant in possession on the premises is insufficient, where one call only is made, although the nature of the proceedings is explained to her, and she makes a contradictory statement with regard to her master being at home, and although a copy of the process is stuck on the door of the house. *Doe d. Wright v. Roe*. 233

10. The Court will not grant judgment against the casual ejector upon an affidavit alleging the declaration to have been served on the wife of the tenant, but which does not state that it was on the premises, or that she was living with her husband. *Doe d. Mingay v. Roe*. 30

11. An acknowledgment of a service in ejectment is sufficiently shewn by a letter of the tenant's attorney before the term, threatening a bill in equity in respect of the premises sought to be recovered, the service having been on the daughter. *Doe v. Roe*. 493

12. If, in a declaration in ejectment, no attorney's name is mentioned, no advantage can be taken of it. *Doe d. Simpson v. Roe*. 493

13. When service on lunatic insufficient. *Doe d. Brown v. Roe*. 414

ELEGIT.

A creditor by judgment on bond sued out a writ of execution against the debtor's personal estate, and that writ becoming ineffectual, the creditor filed a bill in Chancery to attach proceeds of the debtor's real estate in the hands of his trustee. Held, that it was necessary to sue out an elegit on the judgment at law, in order to constitute a title to the aid of the Court of Chancery, and a demurrer on that ground was sustained. *Neute v. Duke of Marlborough*. 346

EVIDENCE.

1.—1. If one deed recites part of a former deed, and an action of covenant is brought on the more recent deed, no more of the first deed is proved by the recital than what has been there stated. 2. In such a case, if any other part of the first deed is necessary to be referred to, the first deed must be produced, and it cannot be read in evidence except after proper proof of its execution. 3. Where the second deed recites that the plaintiff was appointed a trustee, and had incurred certain liabilities as such trustee, the nature of those liabilities must be shewn by reading the first deed in evidence. *Gillett v. Abbott and another*. 301

2. Held, that in the examination of an agent's accounts in the Master's office, a claimant's affidavit of debt is not sufficient to prove the debt. *Smith v. Lord Neuburgh*. 92

EXECUTOR.

It is the duty of an executor and trustee to invest for interest small as well as large sums,

for the benefit of the parties interested under the will; but where a will imposes a duty, and gives a discretion to a trustee of attending to the infirmities of one of the objects of the trust, he may hold in his hands funds for that purpose. *Cantwell v. Higgins*. Page 25

HABEAS CORPUS.

1. A writ of *habeas corpus* issued out by a prisoner in custody, being rested as of the last day of T. T., but being commenced in the reign of Victoria, instead of William, the Court will allow it to be amended. *Anon.* 30

2. If a father has been convicted of felony, the Court will, at the instance of the mother, grant a writ of *habeas corpus* to bring up the body of an infant daughter from the custody of the aunt of the latter. *Ex parte Bailey*. 270

INJUNCTION.

1. A party asking an injunction *ex parte*, is bound to apply soon after he discovers the injury against which he seeks protection, otherwise he must give notice of his application. *Perry v. Clark*. Page 59

2. Where a plaintiff applies for an injunction *ex parte*, and it appears from the affidavits in support of the application that the acts complained of had, or might have, been known by him long before, but he does not state the cause of the delay in applying; the Court will not grant the injunction until the defendants have an opportunity of answering the matter of the affidavits. *Lloyd v. Bignold* 155

3. The lessee of a farm cut down timber growing on the hedges and obstructing the cultivation of the land; and also removed fences which were not necessary: Held, that they had committed waste, and an injunction was granted to restrain them. *Peeringham v. Sherburne* 234

JUDGMENT.

1. A judgment for a debt was entered up and docketed in 1805; and in 1808, the debtor's real estate was sold, subject to this debt and to an anterior outstanding term, with notice thereof to the purchaser. No step was taken for more than twenty years to enforce payment of the judgment debt against the estate: Held, that the lapse of time is a bar to relief in equity, and the presumption of payment drawn therefrom is not repelled by evidence of the debtor's, and his immediate vendee's, want of means of paying. *Greenfell v. Girdlestone* 187

2. Circumstances in which in an action for trespass the plaintiff signed judgment on the whole record, and it was held irregular. *Hitchcock v. Waller* 362

3. Where a judgment on demurrer has been obtained, and no copy of a bill of costs, that is not a ground for setting aside judgment and execution, but the costs may be re-taxed. *Taglor v. Murray* 191

4. In a country cause, issue having been joined in Easter Term, it is too soon to move in the following Michaelmas Term for judgment as in case of a nonsuit. *Smith v. Miller* 383

5. Issue joined in July 1837, it is too early to move for judgment as in case of a nonsuit in Hilary Term, 1838. *Tabram v. Groom*. Page 269

6. In an application for judgment as in case of a nonsuit, when it is sworn in the affidavit that notice of trial has been given, that is sufficient without a specific allegation that the cause is at issue. *Corbyn v. Heyworth* 157

LEASE.

What are sufficient words to constitute a lease. *Carr v. Harding* 141

LEGACY.

Circumstances in which the Lord Chancellor, reversing the Vice Chancellor's decree, held, that the provision by marriage settlement was a satisfaction of the provision by will; and that the codicil did not revive the legacy. *Powys v. Mansfield* 121

LIBEL.

1. If a person stands forward as a candidate to contest the representation of a borough, and by a circular letter to the electors, submits himself as a fit and proper person to represent them, and asks their suffrages, he does not thereby give to any elector the right to publish to all the world facts injurious to his character. *Duncombe, Esq., M.P. v. Daniel, Esq.* 283

2. If a libel is alleged in an information to be "false, scandalous, malicious, and defamatory," it seems that such allegation may be supported by proof that it is defamatory; for that what is defamatory is scandalous, and the truth of the libel is not in question.—2. A Judge may direct a jury to find a defendant guilty on such a charge, upon the mere proof of publication. *The Queen v. Wilson* 46

LORD'S ACT.

Where it is sought to bring up the defendant under the compulsory clause of the Lord's Act, the notice required must have expired before the first day of the Term in which he is to be brought up. *Ralph v. Jacobs* 350

MANDAMUS.

Where an appeal had been entered in the Recorder's Court against a borough rate, but before the appeal was heard the town council withdrew the rate, and the town clerk, when the appeal came on to be heard, stated that there was no rate, and declined to appear; and the recorder, on that statement being made, thought he had no jurisdiction, and could make no order on the subject, this Court granted a *mandamus* to the recorder to quash the rate, and allow the party appealing his costs of the appeal. *The Queen v. The Recorder of Stamford* 204

MARRIED WOMAN.

In a suit for the administration of an intestate's estate, it appearing that there would be a large residue for the next of kin, but that the accounts could not be finally made up for some time; upon the application of one of the next of kin, a married woman, whose husband was abroad, and who had made no provision for her, a competent allowance was ordered for her maintenance out of the estate. *Sanders v. Mitchell* 396

MASTER AND SERVANT.

If a party hired for a year, subject to being dismissed at a three months' notice, is dismissed in the middle of a quarter, his remedy, if he has any on the common *assumpsit* for work and labour, must not be attempted to be enforced by action till after the expiration of the quarter. *Smith v. Hayward* Page 59

MORTGAGE.

On a bill by an equitable mortgagee, praying an immediate sale, the Court will make a decree for sale of the estate, giving the mortgagee or his representatives, six months to redeem the title deeds. *Thorpe v. Gutside* 314

PLEADING (COMMON LAW).

A plea of "never did promise" may be treated as a nullity in debt. *King v. Myers* 14

2. Where in an action on a bill of exchange there are two counts, in the latter of which it is alleged that the defendant promised to pay the last mentioned several monies, the promise applies to the monies alluded to in the first count; and a special demurrer, assigning for cause that no promise to pay the bill is alleged, will be set aside. *Cheffers v. Partridge* 142

3. Where a defendant is under terms to "plead usually" &c., he is restricted only as regards the pleas, and not with reference to subsequent proceedings. *Woodman v. Goble* 480

4. A declaration in debt, is irregular after process in *assumpsit*. *Grant v. Souter* 270

5. Where, in an action for work and labour, the defendant means to set up that a club of which he was a member was liable to the plaintiff, he should plead in abatement to the action. *Walton v. Grainger* 270

6. Where there is a variance between the declaration and the process, it is an irregularity which should be taken advantage of by the defendant; if in vacation, by application to a Judge at Chambers. *Tory v. Stevens* 380

7. A demurrer to a declaration, containing counts for money lent, money had and received, and an account stated, assigning for cause that no time is alleged, will be set aside as frivolous. *Jackson v. Cawley* 461

8. The defendant cannot, in an action for not accepting railway shares, plead two pleas of the Statute of Frauds. *Sykes v. Reeves* 413

PLEADING (EQUITY).

1. A single woman, of the age of twenty-one, not found by commission to be of unsound mind, but appearing to the Court to be of weak mind, and incapable of taking care of her property, may file a bill by her next friend for putting her under the protection of the Court; and the Court will exercise its jurisdiction, and refer to the Master to appoint guardians. *Wilkinson v. Hurwood* 313

2. To a bill for specific performance of an agreement and for an account, &c., a demurrer was put in as to part of the account sought for, and an answer, purporting to be an answer to the other parts of the bill, but in effect applying to that part that was demurred

to, held, that the demurrer was overruled by the answer. *Andrew Costa v. Albertazzi*

Page 474

POOR LAW.

Though the commissioners under the Church Building Act, (10 Anne, c. 11), formed the parish of St. Andrew's Holborn into two districts, and called them by the names of St. Andrew Holborn above Bars, and St. George the Martyr, and declared them separate parishes for ecclesiastical purposes: though several local acts of parliament have since described them as "united parishes," and though the Poor Law Commissioners had, in an order made by them, used the same expression; yet as they originally formed but one parish, and never had been effectually separated for the purpose of the relief and maintenance of the poor: this Court held that they must be considered but as one parish, and might therefore under the 26th section of the 4 & 5 W. 4, c. 76, be directed (without the consent of the guardians, as required by the 32d section, in the case of a previously existing union) to unite with other places, to form a union under the provisions of the last mentioned statutes. *The Queen v. Poor Law Commissioners* 477

PRACTICE (COMMON LAW).

1. A Judge sitting in the Bail Court may review the decision of a Judge at Chambers. *King v. Myers* 14

2. The Court will grant a rule nisi to compute principal and interest on a banker's cheque. *Monon* 42

3. When a rule to plead is filed, and notice of declaration delivered on the same day, the Court will not inquire which act was done first. *Aitman v. Cammery* 126

4. The Court will grant a rule for a *distingas*, when after four calls and three appointments, the writ is left with the defendant's wife. *Sharpe v. Cloth* 126

5. A defendant, arrested on the 12th October, and there being no application to the Court on the ground of irregularity until 2d November, held too late. *Brudshaw v. Russell* 169

6.—1. On 3d May, an order made to amend a declaration, the defendant is too late on the 10th June to set it aside.—2. When a plaintiff has demurred to a plea to his declaration, and obtained judgment, he may, on a Judge's order, strike out that count to which the plea was pleaded, without paying costs. *Batten v. Flight* 158

7. A month's time to plead, obtained on 6th September, does not begin to run until after the 24th October. *Le'Peuvre v. Molinens* 382

8. Rule for sticking up notice of declaration in the Master's office cannot include that any future rule, &c., may be served in the same manner. *Layton v. Mason* 412

9. A plaintiff will not be compelled to produce a deed for the inspection of the defendant, in which the latter has no interest. *Smith v. Winter* 413

10. Where a defendant seeks to set aside a notice of declaration, on the ground of his not having been served with process, he must swear that the process had never come to his knowledge; and an affidavit alleging only that he was never served, although there should be other affidavits shewing that the service was on another person, is insufficient. *Giles v. Hemming* Page 493

PRACTICE (EQUITY).

It is a misjoinder of parties to make a husband co-plaintiff with his wife in a suit regarding her separate estate, and a bill so framed is demurrable. The husband may be properly made a party defendant for the protection of the other parties to the suit. *Wake and Wife v. Parker* 363

2. In an information and bill against a corporation, for the better administration of a charity, some of the relators being members of the corporation, but without assigning any other reason, asked that the injunction might be amended by striking out their names: Held, that the record could not be altered except for discovery of matter arising after the filing of the information, but that there was nothing repugnant in the circumstances of members of the corporation being relators in an information against the corporation. *Attorney General v. Conper* 24

3. The Master has no discretion to relax or depart from the New Orders in Chancery. The proper course is to apply to the Court for relief from an inconvenient application of them. *Smith v. Webster* 233

4. A bill was taken *pro confesso* against a defendant for want of answer, and a decree was made to take the accounts before the Master: Held, that the defendant ought to have been served with warrants for attending the Master; and an order *nisi* to confirm the report ought to have been first obtained. *King v. Bryant* 395

5. The Master, in granting an order upon a second application for further time to answer, ought to state shortly the grounds on which he grants the indulgence. The Court will not give costs of a motion to discharge an erroneous order of the Master. *Bushnell v. Bushnell* 442

6. To entitle a person to sue in *formâ pauperis*, it is not enough for him to swear that he is not worth 5*l.* after payment of his just debts, except the matter in question, if it be shewn that he has a yearly income beyond that amount; but he is bound to give the names of his creditors, and state the sums due to them respectively. *Wreaworthy v. Wreaworthy* 219

7. Exceptions filed by defendants to a Master's report were not set down for hearing until after an order was made to confirm the report. That order having been improperly obtained as against the excepting defendants, they, without setting it aside, were allowed to restore their exceptions, and set them down for hearing, although an order had been made in the mean time to take them off the file. *Gibbs v. Hooper* 266

8. A defendant residing in England, admit-

ted in his answer to a bill, that he was a partner in a firm carrying on business in Portugal: Held, that he is not bound to know the transactions of that firm, or to add to his answer a schedule of the books containing such transactions. *Martineau v. Cox* Page 92

9.—1. The Master's report should be confined to the inquiry directed by the order of reference.—2. An order to inquire into the increased value of an estate to a purchaser, by reason of the deaths of persons for whose lives parts of the estate were held at the time of the contract to purchase, will not warrant an inquiry into the increased value by reason of the increased ages of the other lives in the leases.—3. It is irregular in the Court of Equity in the Exchequer to make upon petition an addition to a decree.—4. A petition of rehearing in this Court will not be received after six months from the decree. *Brouke v. Champenourne* 137

PRISONER.

How far a prisoner is supersedable in consequence of the plaintiff not declaring in due time. — *v. Gompertz* 94

PRIVILEGE.

Where an officer of the Court of Exchequer was sued in the Court of Chancery as executor with others, and he served the plaintiff with a writ of privilege, the Court refused to set aside the writ, on the ground that it did not operate as an injunction, or supersede the necessity of pleading the privilege. *In re Thompson* 162

PROHIBITION.

This Court will grant a rule for a prohibition to the judicial committee sitting as the Court of Delegates, where it is clear that unless the decision of the committee is given in one particular way, it must necessarily be wrong. *Ex parte Farmer* 61

2. Where a case is before the Judicial Committee of the Privy Council, on an appeal from an Ecclesiastical Court, though that case may depend on a Common Law rule, the Court of K. B. will not presume that the Judicial Committee will decide wrongly, and will not, therefore, issue a prohibition to prevent it from proceeding with the appeal. *Ex parte Farmer* 268

QUO WARRANTO.

To support a rule for a *quo warranto*, the party applying to the Court for the writ must shew that he has sufficient interest to be a relator, and the facts sworn to by him must be sworn to be true within his own knowledge. An affidavit stating facts on the information of a third person, is not sufficient. *The Queen v. Toomer* 379

RECORDS.

The Court will admit the identity of records produced by an officer of the Court, and transmitted to him from the proper custody, although conveyed by various and unofficial persons. *Greenfell v. Girdlestone* 182

SUPPLEMENT.

The 57th section of the 4 & 5 W. 4, c. 67,

does not create any new settlement. Therefore, where a man married the mother of an illegitimate child, an order of justices to remove the child from a parish where it had been placed out to nurse, and to convey it to the parish of its birth settlement, was held good; and an order of sessions, reversing the order of removal, was quashed. *The Queen v. The Inhabitants of Wendron* Page 348

2. Where a party, possessed of a copyhold property, had executed a deed, vesting that property in trustees for the purpose of selling in order to satisfy his creditors, and in such trust deed had expressly covenanted to surrender the estate for the purposes of the deed: Held, that he nevertheless had a sufficient estate to enable him to gain a settlement. Held also, that he was not bound to reside on these premises, but that if he resided on premises in the same parish, it was sufficient. *Rees v. Ardleigh* 12

SOLICITOR.

1. A solicitor refused to proceed in a cause unless the costs incurred in it, and in an action at law, were first paid. He was ordered to deliver the papers in the cause to the solicitors appointed by the client to the cause, subject to his lien for his costs, without any direction as to the taxation of them. *Heslop v. Metcalfe* 107

2. Held, that solicitors (who were made defendants to a suit together with their clients,) are not bound to answer interrogatories, if the answers would disclose communications to their clients from another person, not a party to the suit. *Deaborough v. Rawling* 156

3. A solicitor is bound to have an undoubted authority from a client, before he appears for him in a cause, although it is not necessary that the authority should be in writing. — *v. Clarke* 378

4. If a solicitor, after commencing a suit for a client, refuse to proceed with it unless the client pays or provides security for the payment of costs, he must give up all the client's papers necessary for carrying on the suit, discharged from any lien for his costs incurred. *Heslop v. Metcalfe* 377

5. A solicitor who was made defendant to a bill, together with his clients, refused to answer interrogatories relating to communications made in his presence to his clients by a third person, on the ground of privilege: Held, that the solicitor was bound to answer so much as would enable the Court to judge whether the communications were entitled to privilege. *Distborough v. Rawlins* 378

And see ATTORNEY.

TAXATION.

1. When the defendant has not appeared, the rule requiring a bill of costs to be delivered previously to taxation, does not apply. *Birch v. Poynter* 413

2. Where it does not appear by the pleadings, that a defendant is in such a position as to entitle him to treble costs under the Highway Act, the proper course is to make the claim for such costs on taxation, and not to apply at once to enter a suggestion. *Wimborn v. Giles* 270

3. This Court has a general jurisdiction, independent of statute, to refer an agent's bill of costs for taxation; but the order of reference is only to be obtained on notice to the agent, and where he has retained in his hands part of the costs, the balance only is to be tendered to him, or deposited in Court. *Jones v. Roberts* Page 266

TITHES.

An occupier of lands, subject to tithes, removed his sheep from them to other lands which he held tithe-free, and on which the sheep were shorn; and after five days from the time of removal, they were driven back: Held, on a bill by the rector of the parish, where the sheep were driven from, that the removal was fraudulent to deprive him of the tithe of wool, and an account of the same was decreed. *Hall v. Stevens* 300

TRIAL.

1. A writ of trial was directed to the sheriff of Middlesex. No notice was given to the defendant that the case would be tried as an undefended cause. It was so tried, being taken out of its turn for that purpose, the defendant's attorney not being present in the Sheriff's Court. A rule for a new trial was refused, on the ground that the attorney ought to have been present from the sitting of the Court. *White v. Poppleton* 156

2. The Judge of an Inferior Court of Record, to whom a writ of trial is directed, has power to put off the trial of the cause which the writ directs him to try. *Crooks v. Sidelbottom* 493

TRUST.

1. A party interested with others in a freehold estate, joined with them in a conveyance of the estate to trustees for sale, and became bankrupt. The trustees paid all the bankrupt's debts out of his share of the estate, and received a release for so much. They are still, after a lapse of several years, liable to account to the bankrupt for the general produce of the estate. *Prebble v. Fenner* 300

2.—1. Several persons having joined in a petition, it is not competent for some of them, when the petition stands for judgment, to withdraw their names without consent.—2. Charity estates heretofore vested in a municipal corporation upon trust for purposes beneficial to all the inhabitants of the borough, may be well administered by trustees, some of whom are members of the new corporation.—3. Deeds relating to the charity estates were deposited by the former trustees with bankers to secure the repayment of money. The Court has no jurisdiction on petition, without consent of the bankers, to decide upon the validity or extent of their lien. *In re Ludlow Charity* 203

3. A chapel erected chiefly by the subscriptions of the congregation, and held upon lease for religious worship, according to the doctrine, discipline, and rules of the Established Church of Scotland, is a trust for that purpose, and not to be used for worship according to any other form, though a majority of the congregation should desire it against the minority. Such a trust is a fit subject for a bill, and not for bill and information. *Millegan v. Mitchell* 136

VENDOR AND PURCHASER.

A person purchasing the stock in trade and good will of a business, has no right to continue on the shop and merchandise the name of his vendor and predecessor, without his consent. *Hume v. Beale* Page 58

WARRANT.

The Court will not set aside a verdict as for excessive damages, because the plaintiff is in a very humble situation of life, and the premises which he occupies, and in which he complains that a trespass has been committed, are held by him at a very low rent. *Day v. Hollaway* 27

WARRANT OF ATTORNEY.

1.—1. An attestation to a warrant of attorney in the form "Witness, Henry King, attorney for the defendant at his request," is sufficient.

—2. Where a warrant of attorney to confess judgment of a term is given, it is sufficient, notwithstanding the Pleading Rules, provided the judgment is signed of a particular day in the Term.—3. Where the attorney for the plaintiff is the attesting attorney, the warrant will be set aside. *Todd v. Gompertz* 412

2.—1. On an application to set aside a warrant of attorney, it need not be shown that the defendant "is in custody on mesne process," if from the facts it appears that such was the case.—2. Where a defendant is in custody of one plaintiff, and gives a warrant of attorney to another, he cannot avail himself of the rule of H. T. 2 W. 4, in respect of such warrant of attorney. *Weatherill v. Bomp* 350

3. An affidavit in support of an application for leave to enter up judgment on an old warrant of attorney, executed by a markman, alleging the warrant to have been "duly executed" by the defendant, but not stating that

it was read over to him, is insufficient. *James v. Harris* Page 29

4. It is incumbent on a prisoner, desirous of obtaining a writ of attorney, on the ground of an attorney not being present on his behalf, to shew by his affidavit that he is in custody on mesne process, and it is not necessary that the plaintiff should shew by his affidavit that the defendant is not in such custody. *Lewis v. Gompertz* 109

WASTE.

Where the declaration is for voluntary waste, it must be supported by proof of the waste being wilful: merely permissive waste is not sufficient. *Martin v. Gillham* 92

WILL.

A devise of freehold to trustees, on trust to sell and vest the proceeds for the benefit of persons named, is inconsistent with the devisee's widow's right to dower out of that freehold, larger benefits being given to her by the will. A direction in a will to pay all the testator's just debts out of the proceeds arising from the sale of a freehold house and furniture, does not exempt the personal estate from payment of the debts. *Parker v. Downing* 281

WITNESS.

1. The fact of a plaintiff not having proceeded promptly in an action, is no ground for refusing to allow a witness to be examined on interrogatories. *Weekes v. Pell* 284

Where a witness is subpoenaed to give evidence on a trial, and the attorney for the party subpoenaing him, gives him leave to be absent until a particular hour, and before that time the cause is called on in the absence of the witness, a motion for an attachment for disobedience to the subpoena will be unsuccessful. *The Queen v. Furr* 212

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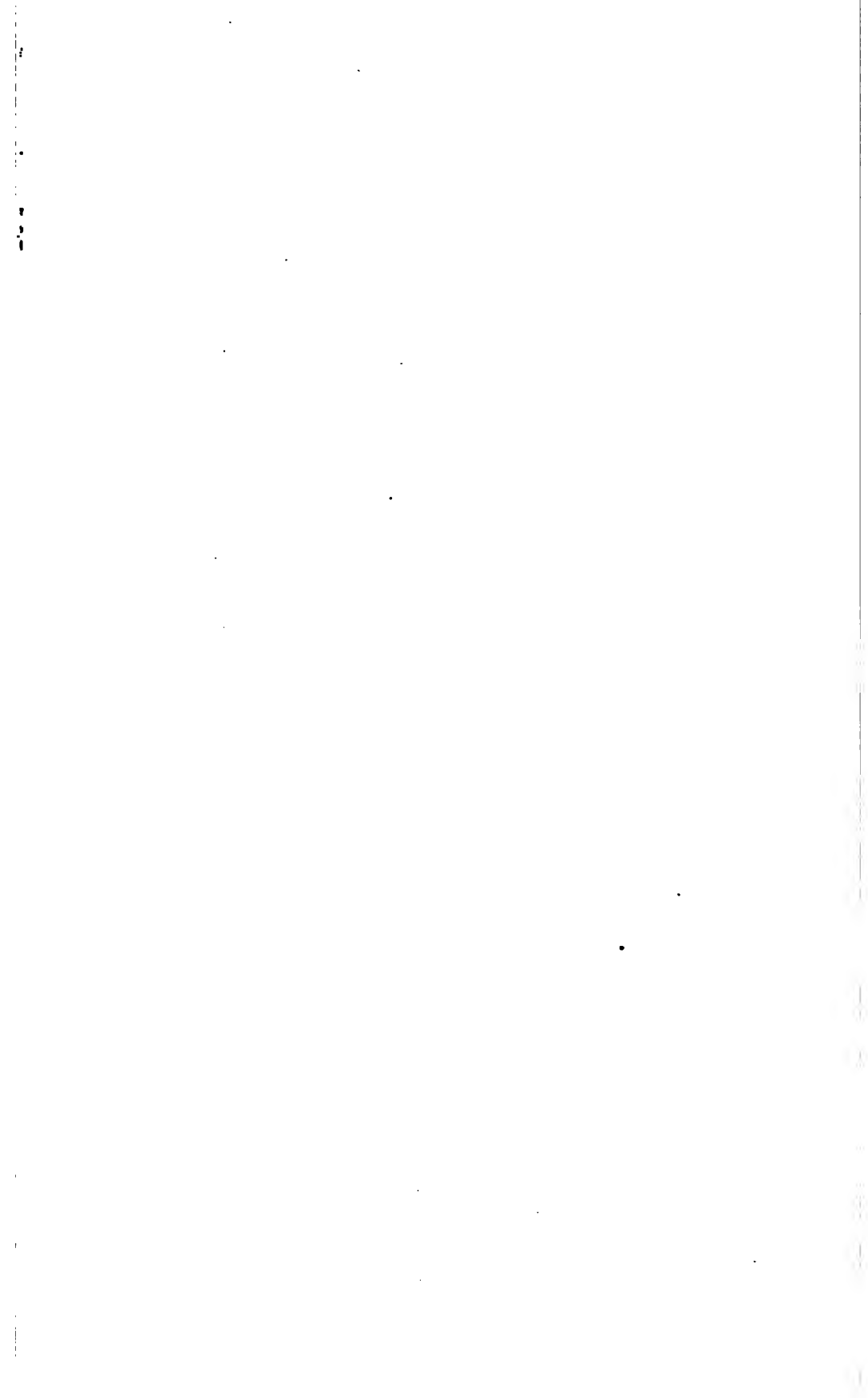
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